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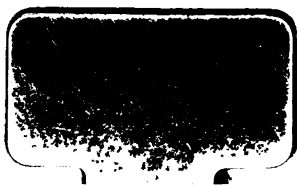
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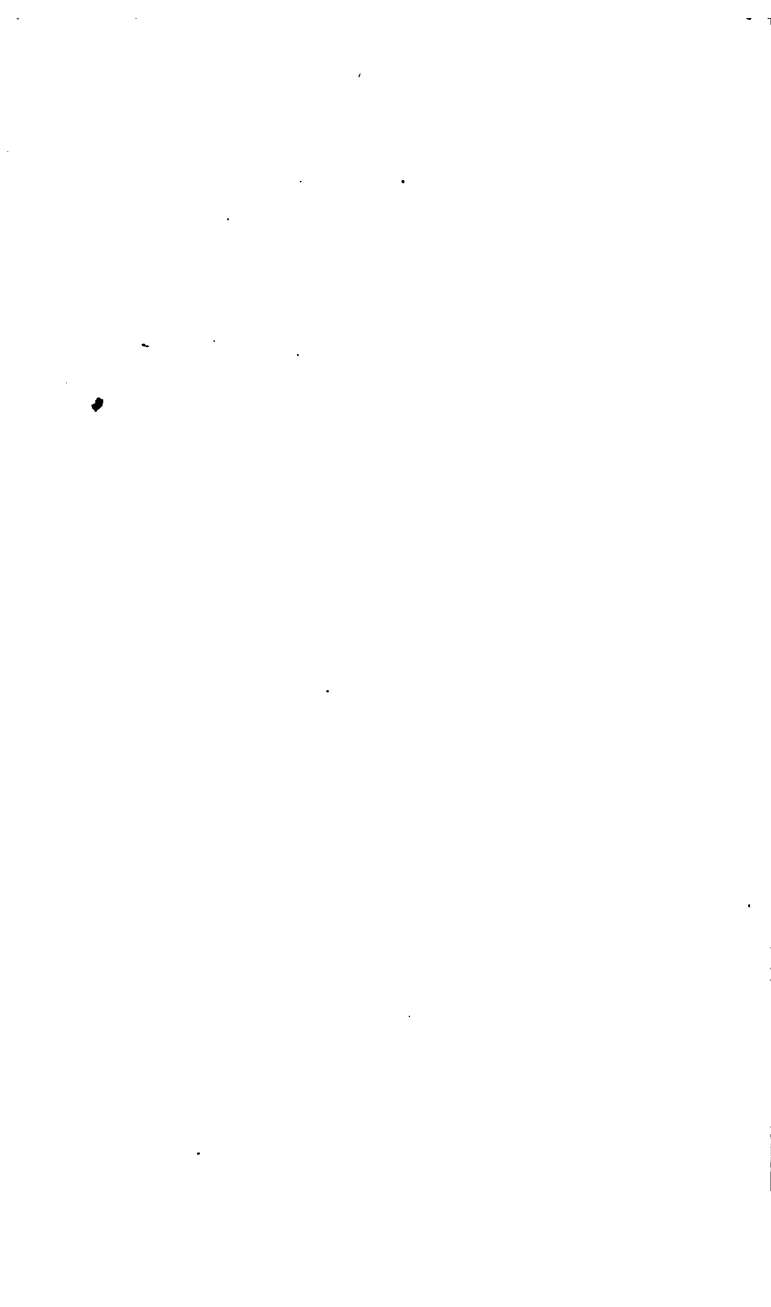
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THE
JURYMAN'S LEGAL HAND-BOOK;
AND
MANUAL OF COMMON LAW.

IMPORTANCE OF TRIFLES.

WHY was the refusal of a "private gentleman to pay twenty or thirty shillings to the king's service argued," says Clarendon, "before all the judges in England?" Because in those twenty shillings, one party saw the germ of a tyranny, and the other of a rebellion. Why will a lawyer warn you against permitting a neighbour to claim the gathering of even a leaf upon your estate, without contesting his right? Because the gathering the leaf may invalidate your title to the whole estate. Why will a wise politician contest so earnestly for the form of a word, or the wearing of a hat, or the title of a writ? Because each of these will become a precedent; and in precedent is involved principle. Why will an engineer be alarmed at the first drop of water oozing through a dam? Because the rest, he knows, will follow it. Why is the discovery of one little bone in a stratum of a rock enough to overturn a whole theory of geology? Because the little bone, like a pack-thread, will draw after it the whole skeleton like a coil of rope; and the skeleton will imply the power which brought it to its site; and that power will be vast and pregnant with other influences; and thus the whole system of the science will be dragged into peril, as many other systems have been perilled, and have been upset by the merest trifle, by one little fact. Why will a spot of blood betray murder? Why will the print of a nail discover a thief? Why will a whole neighbourhood take flight at the sight of a little boy, with only a little spark of fire going into a magazine of powder; or a crowd disperse upon the ice at the sound of the slightest crack? Because nature, as well as theology, has her Athanasian creed and her damnatory clauses for those who neglect iotas—because nature, as well as theology, does not know what a trifle is.—*Sewell's Christian Morals.*

THE
JURYMAN'S LEGAL HAND-BOOK;
AND
MANUAL OF COMMON LAW:

ADAPTED TO THE COMPREHENSION OF JURORS AND OTHERS, AND AFFORDING INFORMATION PECULIARLY USEFUL TO PROFESSIONAL GENTLEMEN, TO THE MAN OF BUSINESS, THE PARISH OFFICER, ETC. ETC.

PART I.—Comprehending introductory matter, relative to Criminal Jurisprudence :—Morality the Elementary Power of Empire—the Homes of England—Maxims of Law—the Vices of Mankind—Criminal Offences in England and Scotland—Statistics of Crime in England and France—National Education and Prejudices, &c.

PART II.—The Marrow of the Jury Laws, with the Duties, Powers, Liabilities, and Qualifications of all GOOD and TRUE JURORS, competent to serve either on grand, special, or petty juries; or whether on ordinary or particular Inquests, &c.—The Origin, Nature, and Solemn Obligation of Oaths, &c.—Nature of the Oath taken by our Saviour—the Oath taken by Harold, &c.

PART III.—A Glance at the Early Ages—Municipal and Criminal Law of England—Magna Charta—The Law of Treason—Punishment of Death—Right of Personal Liberty—Proceedings in Civil Actions—Law of Landlord and Tenant, &c.

Vide General Index.

“The oath which he swore to our father Abraham.”—LUKE i. 73.

“Ορκον ὃν ὤμοσε πρὸς Ἀβραὰμ τὸν πατέρα ἡμῶν. Λουκᾶν Κεφ. δ. 73.

“An oath is an appeal to God, either upon a testimony that is given, or a promise that is made, confirming the truth of the one and the fidelity of the other.”—BISHOP BURNET.

“An oath is an affirmation or denial by any Christian, of any thing lawful and honest, before one or more that hath lawful authority, for advancement of truth and right; calling upon God to witness that his testimony is true.”—LORD COKE.

BY THOMAS H. CORNISH, ESQ.,
OF GRAY'S INN, BARRISTER-AT-LAW.

LONDON:
LONGMAN, BROWN, GREEN, & LONGMANS;
AND
E. SPETTIGUE, LAW BOOKSELLER, CHANCERY LANE.

1843.

ANTIQUITY OF JUDGES GOING CIRCUIT.

It is not, perhaps, generally known, at how remote a period this practice prevailed; but, on consulting 1 Samuel, vii. 16, we find this extraordinary confirmation: "And he (Samuel) went from year to year in circuit to Bethel, and Gilgal, and Mizpeh, and judged Israel in all those places."

שמואל א ז יו והלך מדי שנה בשנה וסבב בית-אל ורגל'ל
והמצפה ושפט את-ישראל את-כל-:





TO THE RIGHT HONORABLE

Thomas Lord Denman,

BARON DENMAN OF DOVEDALE IN THE COUNTY OF DERBY,

LORD CHIEF JUSTICE

OF

HER MAJESTY'S COURT OF QUEEN'S BENCH;

ETC. ETC. ETC.

MY LORD,

I DEEM it a high honor to be permitted to dedicate to your Lordship the ensuing "Manual of Common Law," expressly provided for the use of our young and unpractised JURYMEN. In my humble opinion, such a dedication is singularly appropriate, not only from your Lordship's former long and arduous judicial and ministerial services in the criminal court

of the city of London, but, also, because the first idea of the "Juryman's Legal Hand-Book" arose out of your Lordship's instructive "charge," delivered on a late sufficiently melancholy occasion, to the gentlemen of the grand jury at York;* and through which dignified appeal to the intellectual acumen and practical humanity of such grand jury, the first principles of law and order, and the imperative necessity for the preservation of the Queen's peace, were so eloquently, yet so devoutly propounded.

That the completion of this unpretending little book has been delayed beyond the period I had first named for its publication, has been to myself a source of regret; yet I would fain hope that the work is certainly now far more deserving (I dare not say worthy) of your Lordship's acceptance, than it could have proved, had the same appeared in the, perhaps, imperfect state in which it was first conceived. Those learned gentlemen at the bar of England, who have undertaken even similar professional labours, and those able lawyers who have produced works of far

* Vide page 158 of this work; (and, also, 208, for a portion of Lord Chief Justice Tindal's charge, at Stafford.)

greater magnitude, and, doubtless, of more lasting usefulness, will not despise, on account of the small pretensions of its author, a volume, the contents of which are undoubtedly of an educational, rather than a dogmatical character, and collated for the sole purpose of securing to JURORS especially, and to Englishmen generally, plain directions for the due performance of a most important public duty. Moreover, it affords me much satisfaction that it is produced under such distinguished protection as your Lordship's; and I cannot but feel highly gratified in being thus permitted to subscribe myself publicly, as I have had the honor of doing privately,

MY LORD,

Your Lordship's most obliged,

Obedient and faithful servant,

THOMAS H. CORNISH.

Gray's Inn; Jan. 1843.

MEMORANDA.

POOR RATES.—If any person alters a poor rate or a highway rate, in a single word or figure, after having been allowed by justices, it not only renders the rate illegal, but subjects the party making the alteration to indictment.

THE NEW GAME LAWS ACT, which has just received the Royal Assent, transfers the collection of the revenue arising from the sale of game certificates from the Stamp Office to the Board of Excise, and increases the penalty for sporting without a game certificate from twenty to fifty pounds.

PREFACE.

THE peculiar character of this little work—compiled for the use of *jurors* and others—does not seem to call for prefatory remarks; therefore I shall only add to the following pages a few passing observations.

That forensic and learned gentlemen may rightly understand the motive which led to the production of this, I trust, timely, if not educational volume, it may be well here to say, that in the construction of THE JURYMEN'S LEGAL HAND-BOOK, I have aimed only at being *useful*. "Books," says Dr. Johnson, "that you may carry about with you—take to the fire-side, and readily hold in your hand, are the most useful after all. A man will often look at them, and be tempted to go on, when he would have been frightened at books of a larger size, or a more erudite appearance." A great book, says the inspired moralist, is a great evil.

Let me hope, then, that frequently, whilst the humbler and less wealthy classes of our English jurymen, of whatever sect* or religious creed, find information blended with amusement, in the juridical and other matter here brought together, some of the more experienced and opulent of my fellow-citizens may be induced to take up this **MANUAL OF COMMON LAW** as a temporary substitute for more elaborated works upon the same subject by abler writers and more acute jurists.

It is not because I despise the charms of eloquence† that I have entirely laid them aside, but because I know

* Sects, in many points, are beneficial to religion. As the members of each are critics of the doctrine and practice of all the rest, a species of mutual responsibility is created, by which all (though it is a truth few are willing to own) are in some degree controlled. Many excesses are prevented by the dread of active malevolence and honest indignation, strengthened by the spirit of religious partizanship. Sectarianism has done for Protestantism what Monasticism did for Popery—it has kept it alive, and extended it. • • •

† The common fluency of speech in many men, and most women, is owing to a scarcity of matter and a scarcity of words; for whoever is a master of language, and has a mind full of ideas, will be apt in speaking to hesitate upon the choice of both; whereas common speakers have only one set of ideas, and one set of words to clothe them in, and these are always ready at the mouth; so people come faster out of a church when it is almost empty, than when a crowd is at the door.—*Swift*.

I am not master of them, and so choose rather not to attempt those graces than, by mere imitation, to weaken the subject to the less educated part of my readers, without approving myself to the nicer judgment of the more learned and skilful.

“Idleness of mind,” says Burton in his *Anatomy of Melancholy*, “is the badge of gentry, the bane of body and mind, the nurse of naughtiness, the stepmother of discipline, the chief author of all mischief, one of the seven deadly sins, the cushion upon which the devil reposes, and a great cause of melancholy.”

Lord Coke wrote the subjoined distich, which he religiously observed in the distribution of his time :

“Six hours to sleep—to law’s grave study six ;
Four spent in prayer—the rest to nature fix.”

Sir W. Jones, a wiser economist of the fleeting hours of life, amended the sentiment in the following lines :

“Seven hours to law—to soothing slumber seven ;
Ten to the world allot,—and all to Heaven.”

I have done herein nothing unworthy of myself and legal studies, anxiously employed. In a word, I have endeavoured to be useful, without pretending to be learned. I have compiled this diminutive

expositor with a view to the better understanding, especially by JURYMEN in general, of the laws which regulate the most admirable of all our time-honoured institutions, TRIAL BY JURY.

My *introductory matter* is of a kind somewhat deserving notice, although chiefly relating to criminal jurisprudence—morality the elementary power of empire—the homes of England—maxims of law—the vices of mankind—statistics of crime in England and Scotland, &c. One word only on this last topic.

The recent amendment of our penal code, together with an amelioration of the severity of criminal punishment, is, indeed, a subject for national congratulation. That crimes are less frequent, now that mercy is permitted to take the place of severity, is certain; and, since rational substitutes have been found for the punishment of death, we may safely expect a larger diminution in the number of penal offences.

The object of all law is the prevention of crime, the preservation of the Queen's peace, and the faithful conservation of life and property, together with our public institutions, in church and state. Simple, indeed, are the rules of which English law is composed. Beneficent in its

intentions, we invariably find it acting by rule, and not governing by will. In the absence of a sound scriptural education, necessity is known to be one of the chief incitements to vice and depravity. From a condition of indigence, wretchedness, and despair, the transition is easy to criminal offences; the intermediate state being ordinarily uncontrollable intemperance. Sobriety, aided by the strength of reason and divine grace, may keep under and subdue every vice or folly to which man is most inclined. Drunkenness,* on the contrary, gives fury to the passions, and stimulus to those objects which are apt to produce them. When a young fellow complained to an old physician that his wife was not handsome—"put less water in your spirit," says the philosopher, "and you will quickly make her so." Wine heightens indifference into love, love into jealousy, and jealousy into madness. It often turns the good natured man into an idiot, and the choleric into an assassin. It gives bitterness to resentment,

* If a man could see and hear himself when he is drunk, as others who are not drunk see and hear him, he would be cured for ever. Seeing others in the state makes no impression, because every man believes that he is different from the rest of his species.
Bentley's Miscellany.

it makes vanity insupportable, and displays every little spot of the soul in its utmost deformity. Liquor throws a man out of himself, and infuses qualities into the mind which she is a stranger to in her sober moments. The person you converse with after the third bottle, is not the same man who first sat down to table with you; and to jest upon a man that is drunk is to injure the absent. "Drunkenness," says Addison, "besides its ill effects upon the body, insensibly weakens the understanding, impairs the memory, and makes those faults habitual which are produced by frequent excesses."

In the absence of a work of this kind, it occurred to me that an attempt to supply a compact digest of those laws, which—in a familiar manner, and at a small charge, should furnish both the *juror* and general reader with a sufficient knowledge of the late Consolidating Act relating to JURIES; together with the several enactments which, in a measure, still influence the unrepealed law—might, possibly, be followed by an expression of approbation. In this compilation I have supplied them with a definition of an oath, and have submitted some remarks touching the lawfulness of oaths, as solemnly administered to, and from time im-

memorial as solemnly taken by, all devout persons I have subjoined a few strictures on the nature of the oath taken by our Saviour before the high priest—the oath taken by Harold, &c.

And this, too, at a time when the Lord Bishop of London, both in and out of Parliament, openly repudiates the present *mode of administering* the “imprecatory” form; or both *juramentum purgationis*, and *juramentum triationis*, in our criminal and common law courts; notwithstanding the theory propounded by Mr. Solicitor-General Murray, (in the celebrated case of *Omychund and Baker*,) who says, “No country can subsist a twelvemonth, when an oath is not thought binding; for the want of it must necessarily dissolve society.” Mr. Justice Erskine, on a late occasion, at Gloucester, said, “The proceedings of the courts of law are all dependent on the sanctity of an oath, and an oath borrows all its power from the religion on which it is founded. Lord Hale observes, ‘To say religion is a cheat, goes to dissolve the bonds of society; to reproach religion is to offend the law.’” *

It is undoubtedly true that oaths are ordinarily ad-

* In Adams’ case, for selling blasphemous publications.

ministered in our criminal and other courts of justice, by persons of whom little can be said with regard to their fitness for that *religious* office. It is thought by many that none but ordained Clergymen of our venerable national church should be permitted to administer oaths, that is, to swear men upon the holy Gospels* in our law courts; and I hesitate not to say that some alteration in this respect is positively called for. In the next place, I have rendered the new Jury Laws concise and intelligible to the most ordinary comprehension. Thirdly, a portion of the whole space has been devoted to a glance at man in a state of nature—to a brief view of the rise and progress of the laws of England, from Magna Charta; and, also, descending to more familiar topics, to the right of personal liberty—the law of real and personal property—proceedings in civil actions—law of landlord and tenant—law of repairs, &c. &c.

* “The best book ever written,” says Burke, “against popery, is the NEW TESTAMENT.”

INTRODUCTORY MATTER.

“MORALITY THE ELEMENTARY POWER OF EMPIRE.”

“What are laws without morality; and where is morality without religion?”—MADAME DE GENLIS.

CONFUCIUS, the great eastern moral philosopher, laid the foundations of all the stability and civilization of the Chinese empire in the pure character of his life, and the sound principles of his moral maxims.

Confucius was born *five hundred and fifty-one years* before the birth of Christ, in the kingdom of Lou, in the present province of Chan-Long. He was contemporary with Pythagoras, and lived a short time before the period of Socrates. His parents were both well descended, being of great distinction and rank in the empire. His piety was of the most exemplary character, his grandfather being one of the most holy men of his time, worshipping one supreme Creator of heaven and earth, but in no possible connexion either with images or pictures, or any personal object or thing in the heavens above or in the earth beneath—a pure and unadulterated Deism, in the absence of the Christian dispensation.

His principal studies were directed to antiquity, which his doctrines tended to bring into notice among

the learned of his age. He married at the early age of nineteen, and had one son (*Pe-Yu*), who died at the age of fifty, but left behind him a son (*Tsou-tse*), who followed the course of his grandfather, and arrived at the highest offices of the state. In the latter period of his life, Confucius was divorced from his wife, for no other reason, as the Chinese allege, than that he should be free from all incumbrances in pursuing his studies. The life of this man constituted a period of a "*national reformation*." But every province in the empire then was a distinct kingdom, which had its own laws, and was governed by its own prince; though all recognised the imperial supremacy.

The great efficacy and force of the doctrines of Confucius went to denounce avarice, ambition, and voluptuousness; enforcing temperance, magnanimity and greatness of soul; inspiring a contempt of pomp and riches, by which he brought kings, in some degree, to govern by his counsels, and the people to reverence him as a saint. He particularly exhorted the women to virtue and simplicity of manners, by means of which he influenced similar virtues in the other sex. His popularity at length created jealousies; and a diversion to the passions of mankind was effected by the introduction of "singing and dancing women" at the court of the King of *Tsi*, when, unable to combat with these loose habits to his satisfaction, he exiled himself, for a time, from his native province, and travelled as a moral lecturer, in which pursuit he founded a school of numerous disciples, having distributed six hundred of them in different portions of the state. Such was the purity of his morality, that one writer, speaking of him,

says—"He seems to speak rather like a doctor of a revealed law, than like a man who had no light but what the light of nature afforded him; for he taught by example as well as precept." It is certain that he gave to the morality of his time *modesty and humility*—those charms of which all the doctrines of the Grecian sages were deficient.

Confucius is said to have *lived secretly three years before his death*, mourning and lamenting the vices of the age. From this time he began to languish; and, seven days before his death, said—

"The kings reject my maxims: and since I am no longer useful on the earth, I may as well leave it." After expressing these words, he relapsed into a lethargy, and at the end of seven days expired in the arms of his disciples, in the seventy-third year of his age.

After the philosopher's death, his life, character, and doctrines, became more appreciated; and have up to the present hour exercised many of the milder and nobler influences of Christianity over the most populous nation now in existence, or that ever did exist, as far as human records extend.

The canonical books of Confucius are four in number, viz.—

FIRST—Treats on *Self-Government*; and is called *Ta Hw*, the "*grand science*;" showing princes that the *first* lessons in knowing how to govern others, is to well govern themselves.

SECOND—Called *Tehong Yong*; or, the "*immutable mean*;" teaching piety, fortitude, prudence, and filial duty.

THIRD—The Book *Yan lu*; or, the Book of Maxims; divided into twenty articles; combining the essence of the virtues taught by the seven wise men of Greece.

FOURTH—The Book *Meng Tsee*; or, Perfect Government: partly the work of the disciple of Confucius, Mentius.

There are other minor works, for the management and education of children; inculcating filial obedience, as a duty to be enforced by parents, *due to the state*.

There is a Latin translation of these works extant, by Father Noel, printed at Prague; but we have strangely and unaccountably neglected the study of the Chinese people and their government.

In connexion with the writings above alluded to, and the practical life of the writer, together with the present state of China, there remains a noble opportunity for the *Christian philosopher* to draw a parallel between the effects of such system, aided by all that *uninspired* wisdom could accomplish, and the results of the *Christian dispensation*.

Here we shall leave the subject at present, for any other writer to take up.

MEMORANDA.

To act upon a determination made in anger, is like embarking in a vessel during a storm.

The apostles of error are never so dangerous as when they appear in the guise of grey-headed old men.

THE HOMES OF ENGLAND.

THE happy fire-side of the Christian mother—especially when she is there surrounded by duteous children, by kindred and neighbours—affords perhaps one of the most affecting pictures that the artist could paint, with a view to produce in us all a pure veneration for female excellence, and a holy admiration of woman's exalted character and active virtues. Here, in the mingling of fond relations and trusty friends, is generally found the habitations of love and joy, of peace and contentment.

It is in the homes of men that the child is ranged into his caste, whether noble or mean; *there* the seed of his whole life is sown. Schools may develop his powers, and instruct his mind; they may put "sharps" and "flats" before his abilities; the general tone of his daily life will more or less remain true to his first nursery and the nature of his primitive home.

The first training of the soul for heaven is said to be a *maternal* office. The mother it is who presides over those home virtues the cultivation or neglect of which in the first ages of life often gives a right or a wrong bias to its after years. In this "homely court" let our virtuous English mothers preside with undiminished solicitude and untiring perseverance. Even when adverse circumstances occur—and against such neither anxious foresight nor watchful piety can always guard—the pious Mother should not relax her endeavours; should not suffer her faith to fail. Her duty is not more imperative in its principle than encouraging in its per-

formance. She is animated by a conviction founded upon experience, that a heart is seldom so reprobate as to throw from it the old forms and close-knit habits of filial piety. Indeed, generally speaking, "character" is formed by *maternal* influence—an influence whose importance is incalculable. It is the earliest; it is the most natural; it strikes deepest root. Years of active engagement in a busy world may for a time choke its growth; it has, however, a vitality, which, when called into action by sickness, or sorrow, or approaching death, and fostered by the dew of God's blessing, blossoms and gives fruit—even "fruit unto holiness, the end whereof is everlasting life."

The fire-side home of childhood!—childhood itself, and the very name of "Father." Yes, childhood is like a mirror, catching and reflecting images from all around it. Forget we not that an impious or profane thought, *uttered by a parent's lip*, may operate on the young heart like a careless spray of water thrown upon polished steel, staining it with rust, which no after scouring can efface.

There is no music half so sweet as the voice of domestic love; no air so refreshing to the soul as that of home—"delightful home," purified and hallowed by contentment, virtue, and religion.

There is no word in any other language which will properly express the meaning of our word *comfort*; and foreigners have no expression which fully conveys the idea of our word *home*. Now it is remarkable enough, that these two English words should both have the same remark applied to them, while they have so intimate a connexion with one another; for certainly the married

man who cannot find *comfort at home*, cannot possibly find it any where else.

The moral cement of all society is virtue; it unites and preserves, while vice separates and destroys. The good man may indeed be called the salt of the earth.

"The hours of a wise man," says Addison, "are lengthened by his ideas, as those of a fool are by his passions. The time of the one is long, because he does not know what to do with it; so is that of the other, because he distinguishes every moment of it with useful or amusing thoughts; or, in other words, because the one is always wishing it away, and the other always enjoying it."

The way to be happy is not past finding out. Knox, in his Christian Philosophy, says that "men always compare themselves with those who are above them, without once looking into the vale below, where thousands stand gazing at them with envy and admiration. By this unfortunate comparison, their own good things lose much of their value in their own esteem, and sometimes become totally insipid.

"When we consider the number and variety of evils, almost intolerable, in the life of man, we should learn to esteem every disaster incident to human nature, which has not yet fallen to our lot, as a just cause of self-congratulation, complacency, and gratitude. But, through envy, we turn from the misfortunes of others; and think only of those advantages which give them a superiority over our own condition. If we see a man deaf, or dumb, or blind, or lame, or poor, or in disgrace, we do not derive comfort from the consideration of our own exemption from his defects and calamities;

but if we observe another elevated to a high rank, or loaded with riches, we secretly repine that we have not been equally blessed with worldly prosperity. But let us consider how many there are who would envy every one who has but health and liberty. Go into an hospital. Visit a poor-house. Inspect a prison. Compare your own health, your own competency, your own liberty, hard as you deem your lot, with the friendless wretch who lies in the agony of pain, or languor of disease, with no help but the cold hand of official charity. No kind relative to sooth with his bland voice, to close his eyes, and shed a tear on his departure. Compare your lot with his who is loaded with chains, where the iron enters his soul, in a cold and damp dungeon. Compare it with that of your poorer neighbours, at the next door. Compare it with that of all the sons and daughters of affliction, a large family, every where to be found."

"The Christian parent," says Bishop Jebb, "ought to be a living exemplification of Christianity. His house, his habits, his family, his associates, his pursuits, his recreations, ought all to be so regulated as to evince that religion is, indeed, the parent of order, the inspirer of good and plain sense, the well-spring of cheerfulness, the teacher of good manners, and the perennial source of peace." And Mr. Locke, when discoursing on the best means of educating the middle classes of society, sensibly remarks, that "we are born with faculties and powers capable, almost, of any thing;" such, at least, as could carry us further than can easily be imagined; but it is only the *proper* exercise of those powers which gives us ability and skill in any thing, and leads us to-

wards perfection. Let us hope, then, that the pursuits and objects of "general education" have not been mistaken—have not been misapplied; since it must appear clear that the grand problem of education is not to cultivate the memory alone, which in the dullest may, perhaps, by assiduous and incessant diligence, be constrained to lay up stores of reminiscences which will never ripen into useful and productive knowledge, while the other powers of the understanding are either dormant or overweighed with the load under which the whole mind is labouring; but to teach enough, and not too much. Increase of knowledge, it must be confessed, is a victory over *idleness*, and the beauty of knowledge is rectitude of conduct.

That we should, each of us, be contented with our condition in life, seems essential to the well being of society at large. Archdeacon Paley, in the "Reasons for Contentment," which he addressed to "the labouring part of the British public," after pointing out the various considerations which should lead men to be satisfied with that state of life to which it has pleased God to call them, thus concludes his able and useful address: "If to these reasons for contentment, the reflecting tradesman or artificer adds a very material one, that changes of condition, which are attended with a breaking up and sacrifice of our ancient course and habit of living, never can be productive of happiness; he will perceive, I trust, that to covet the stations or fortune of the rich, or so, however, to covet them as to wish to seize them by force, or through the medium of public uproar and confusion, is not only wickedness but folly; as mistaken in the end as in the means; that it is not

only to venture out to sea in a storm, but to venture for nothing."

Really to inform the understanding, corrects and enlarges the heart. Grateful as we should be to the Divine Being, whose rich benevolence and untold mercy has imparted to us reasoning intellect, we should consider ourselves more and more indebted to Him, from whose "eternal mind" another ray of knowledge is communicated to our own.

We should not deceive ourselves; the Christian character is not formed by bits and scraps of Scripture, however carefully committed to memory, however judiciously selected and arranged, but by the spirit of the whole Scriptures being brought to bear upon the conscience and the heart.

All who feel interested in the public welfare, should bear in mind, that in proportion as Christian wives, mothers, and sisters, show *piety at home*, and present to their households the amenities of Christian purity, courtesy, and loveliness, so will their husbands, sons, and brothers, feel the power of female excellence; for it is an undeniable fact, confirmed in the history of all ages, that the manners of woman form the character of the community, and the elements of the destiny of empires commence their operations on the maternal lap, in the nursery, and at the domestic fire-side.

MAXIMS OF LAW, &c.

FOR THE USE OF PETTY JURORS, AND OTHERS.

1. EVERY witness should be of good character ; that is, above suspicion.

2. The verdict of a jury must be *according to the evidence*.

3. Any man may lawfully interfere to prevent a rescue.

4. Punishment is an evil resulting from the direct intention of another.

5. Every receiver of "stolen goods," the moment he or she has received such stolen goods, may be taken into custody.

6. If stolen property be found upon a man *shortly after* the same was lost by the owner thereof, and he can give no account of the same, the law presumes that the party possessed of it stole the property.

7. Men going about together for the purpose of perpetrating an *unlawful object*, &c. may well be suspected by the police of the country.

8. But if one man be found *in company with another* who is taken in the act of picking the pocket of a person, and it is proved, or shown, that he was not an accomplice, or rather that he was not concurring in the said act of his companion, nevertheless, he is held to be (in most cases) guilty. The *onus* lies on the party *defending* to show to the contrary.

9. Burglary is a breaking and entering the mansion-house of another in the night, (*after nine o'clock*,) with intent to commit some felony within the same, whether

such felonious intent be executed or not. A breaking and entry are both necessary to constitute this offence.

10. *Breaking.* With respect to the "breaking," it is agreed that it is *not every entrance* into a house (in the nature of a mere trespass) which will be *sufficient*, or satisfy the language of the indictment. For example; if a man enter into a house by a door, or window, *which he finds open*, or through a hole which *was* made there before, and steal goods, or draw food out of a house *through such door*, window, or hole, he will not be guilty of burglary. There *must be* an "actual breaking" of some part of the house, in effecting which more or less of actual force is employed; or a *breaking by construction of law*, where an entrance is obtained by threat, fraud, or conspiracy. *Time* is now the very essence of the offence. The malignity of the crime consists in the invasion of the right of habitation.

11. A man should not take advantage of his own wrong.

12. Theft cannot be punished by theft. Men have no right to what is not reasonable, or to what is not for their benefit.

13. No person shall be excused from punishment for disobedience to the laws of his country, excepting such as are expressly defined and exempted by the law.

14. An accessory can never be guilty of a lighter crime than his principal.

15. To make complete crime cognizable by human laws, there must be both a will and an act.

16. An involuntary act, as it has no claim to *merit*, so neither can it induce any guilt: the concurrence of the "will," when it has its free choice either to do or to

avoid the act, or crime, in question, being the only thing that renders human actions either praiseworthy or culpable.

17. Every public offence is a private wrong.

18. No man can adjudge his own cause.

19. In every instance "crime" includes an injury.

20. A fixed design or will to do a complete crime, or an unlawful act, is almost as heinous as the commission of it. No criminal or other tribunal can search the heart, or fathom the intentions of the mind, otherwise than as they are demonstrated by *outward* actions: the law therefore cannot know a vicious will in the absence of a vicious act.

21. There is no unlawful act, without a vicious will.

22. A vicious will is no crime at all. The Saxon law held, that under twelve an infant could not be guilty *in will*; after fourteen, the same individual could not be supposed innocent of any capital crime which he in fact committed.

23. It is a general assumption of law, that a person acting in a public capacity is duly authorized to do so.

24. *Law of Robbery*.—If, in the course of a robbery, a wound is inflicted upon the party robbed, by either a knife or any other cutting instrument, the offence is capital, and the culprit may be left for execution; or the judge may order sentence of death to be recorded, which is equivalent to sentence of transportation for life. Where a robbery is committed by a person armed with a stick, or any weapon of offensive character, with which an assault is committed, the offence is not capital, but subjects the party convicted to be transported for life, or for any period not less than fifteen years; or

to be imprisoned for any term not exceeding three years, a portion of which, but not exceeding one month at a time, may be solitary confinement. In both these descriptions of charges the jury is empowered to find the party accused guilty of a common assault, if they think the circumstances warrant them in so doing. In cases of simple robbery, without any violence, the punishment is transportation for fifteen, or not less than ten years; or imprisonment for any term not exceeding three years.

25. *Suicide a Misdemeanour by the English Law.*—In charging the grand jury at the Hull sessions, the present learned Recorder mentioned the curious circumstance of two cases of attempted suicide, for which the parties were charged criminally at the sessions. The learned gentleman said—"There were two cases in the calendar which he had never seen brought before a court of justice in the course of his practice; they were attempts to commit the crime of suicide. Now there could be no doubt that this was a crime, and one of a very deep character, and an attempt to commit it was a crime of misdemeanour. When that attempt succeeds the guilty party cannot be brought under human law. But when the party makes the attempt and survives, he may be called upon to answer for his conduct. It is an indictable offence, and one of a very high nature.

26. *Scurrility.*—Words which, when used towards some persons and in some cases, are scurrilous, are not so when used towards other persons and in other cases. Rogue, rascal, villain, &c.: these do not, when applied to burglars, perjurers, or murderers, constitute scurrility. They are proper, they are just; and scurrility

implies falsehood as well as grossness. The question in all cases is, whether the terms used be *suitable* to the case: whether they be or be not, more opprobrious than the conduct of the censured party justifies.

27. One of the most excellent rules of our common law is, that a man shall not be convicted of one offence on a "record" charging him with another.

28. Every unconvicted prisoner should be secured—what cannot be denied to him without palpable injustice,—the opportunity of knowing precisely for what PARTICULAR ACT he is to be tried, and, by consequence, "whom" he must summon as *witnesses* for his defence.

29. There does not appear to be any valid reason why the law (which is still defective in many particulars, and needs considerable amendment) should not be so altered as to give to the presiding judge before whom a prisoner is tried the fullest power of causing the "indictment" to be amended in every respect in which it may be technically informal, or insufficient. The security of the community at large imperatively demands that such additional power be given by the legislature to our most learned and humane judges.

30. Every offence committed against the LAW, though only to the immediate palpable detriment of a subject, is necessarily prosecuted in the Queen's name. It is the peculiar (and very important) business of the JURY to decide whether the law has been broken or not. The judge, who is the high official representative of the sovereign, discriminates the amount of guilt, and awards the punishment to be inflicted upon the convict, &c.

31. Every "public prosecution" is a matter which concerns the whole community; though, at first sight,

it may appear to be merely a mode of avenging an injury done to one of her Majesty's subjects.

32. In all "criminal suits," the Queen is the actual prosecutor on the "record;" though it is commonly thought the person on whose complaint the prosecution is instituted is the prosecutor.

33. It should be borne in mind by grand, as well as petty jurors, and others, that if the nominal prosecutor were at full liberty to proceed with, or abandon, an indictment at his pleasure, not only would the general interests of society be constantly disregarded, but indictments would speedily be converted into *mere* instruments of crushing extortion and tyranny.

34. One of the great maxims of law is, that an accused person is not bound to prove himself innocent; but that the accuser is bound to prove him guilty.

35. "Fraud" will vitiate every contract.

36. Every agreement for the purchase of goods above £10 must be reduced to writing.

37. All things upon the premises are distrainable for rent in arrear.

38. In actions of debt on simple contract, *assumpsit*, &c. the "plaintiff" is now limited to *one count* for each distinct cause of action; and the "defendant" to *one plea* for each separate ground of defence; and, by the New Rules each party is compelled to ascertain and state his *CASE* with accuracy and precision. The well-timed abolition of the unlimited effect of the "general issue," has already produced the most benign influence in promoting investigation.

THE VICES* OF MANKIND.

Macrebius, a Latin writer of the fourth century, in his first book of the "Dreams of Scipio," declareth of a philosopher named Crito, who lived one hundred and five years, and till fifty years he was far out of course; but after he came to be aged, he was so well measured in his eating and drinking, and so wary in his speech,

* ANCIENT STATUTES FOR THE PUNISHMENT OF VICE.—The following punishment for immorality, was sentenced by the Mayor of London in 1510, and is still visible on the books of the court: "Die Veneris, xxviii., die Junii, Anno Regni Regis Henrici viii. secundo. Forasmuch as Elyn Davy, Elizabeth Eden, Johan Michel, Agnes White, Marion Beckworth, and Johan Westbede, that here standen, been indicted in the ward of Portsoken of this citie, (the crime here named), have been lawfully convicted and atteynted. Therefore it ys adjudged by the Maior and aldermen of this citie, after the laudable laws, and ancient customs of the same, that the said (here naming the parties) shall be brought to Newgate, and the same day in the market season to be ladde from thens with basons and panns afore theym, ray hods on their hedes, and white rodds in their hands, to the pillory in Cornhil, and there the cause to be proclaymd, and so from thens to Algate, and from Algate to be conveyed to and through Candlewick-strete, Watling-strete, and Flete-strete, to the Temple-barre, and there to be voided out of this citie for ever. And if the said (naming the parties) or any of theym hereafter may be found within this citie, they or she so found, to be set on the pillory aforesaid, three market days next following, every day by the space of an hour, and furthermore, to have imprisonment by the space of a year and a day."—The following notice also appears in the books of the Judgment, having been carried into effect on Richard Dichan, for a similar offence:—"Jude, Maior, 1550. Quarto Die August, Anno Edward VI., quinto. After trial and conviction, he was sentenced to be carried back to prison, and thence, according to ancient custom, to be put into a cart, cloathed in a party-coloured coat, and so drawn through the public streets of the city, and especially through the markets, with the sound of basons and bells and other noises, to expose him the more to mockery and shame, and so to Aldgate, and from thence to be forthwith expelled out of the city, and banished for ever."

that no one ever saw him do any thing worth reprehension, or ever heard him speak a word but was worthy of noting. On this condition we would give license to many, that till fifty years they should be young, so that from thenceforth they would be clothed as old men, and they should esteem themselves to be old ; but I am sorry that all the spring time do pass in flower, and afterwards they fall into the grave as rotten. The old complain that the young do not take their advice ; and their excuse herein is, that in their words they are too long ; for, if a young man do demand an old man his opinion in a case, immediately he will begin to say, that in the life of such and such kings, and lords of good memory, this was done, and that was provided for : so when a young man asketh them counsel how he shall behave himself with the living, the old man beginneth to declare unto him the life of those which be dead. The reason why the old men desire to speak so long is, that since through their age they cannot see, nor go, nor eat, nor sleep, they would that their tongue be occupied to declare of times past. Though it be very vile for a young man to speak, and slander to a young man not to say the truth, yet this vice is much more to be abhorred in old princes, and other noble and worshipful men, which ought not only to think it their duty to speak the truth, but also to punish the enemies thereof. Noble and valiant knights lose their authority, when we see on their heads nought but white hairs, and in their mouths find nothing but lies. What doth it avail a man to desire his life to be prolonged, if the same be wicked, ungodly, and defamed ? The man that is high minded to some, (his equals by

birth, by profession, by station,) to others inconstant, cruel, disdainful, envious, full of hatred, angry, malicious, full of wrath, covetous, a liar, a glutton, a blasphemer, and in all his doings disordered : Why do we see him in the world ? The life of a poor man that for need stealeth a garment or any other small trifle, is forthwith taken away ! Why then is he that disturbeth the whole commonwealth left at liberty ? Oh, would to God there were no greater thieves in the world than those which rob the temporal goods of the rich ; and that we did not wink continually at them which take away the good renown, as well of the rich as of the poor. But we chastise the one, and dissemble with the other ; which is evidently seen, how the thief which stealeth my neighbour's garment is hanged forthwith, but he that robbeth me of my good name walketh still before my door. The divine Plato, (who died 347 years before the birth of our Saviour,) in his first book of Laws, said, " We ordain and command that he which useth himself not honestly, and hath not his house well reformed, his riches well governed, his family well instructed, and liveth not in peace with his neighbours, that unto him be assigned tutors, which shall govern him as a fool, and as a vagabond shall he be expelled from the people, to the intent the commonwealth be not through him infected. For there never riseth contention or strife in a commonwealth, but by such men as are always out of order." Truly the divine Plato had great reason in his sayings, for the man that is vicious in his person, and doth not travel in things touching his house, nor keepeth his family in good order, nor liveth quietly in the commonwealth, deserv-

eth to be banished and driven out of the country. Truly we see in divers places mad men tied and bound fast, which, if they were at liberty, would not do so much harm as those do that daily walk the streets at their own will and sensuality. There is not at this day so great or noble a lord, nor lady so delicate, but had rather suffer a blow on the head with a stool, than a blot in their good name* with an evil tongue; for the wound on the head in a month may heal, but the blemish on their good name during life will never be removed.

* * *

* **TASSO'S CURE FOR SPEAKING ILL.**—The character of Tasso has obtained the highest praise. It is said of him, that there never was a scholar more humble, a wit more devout, or a man more amiable in society. Some person reported to him, that a malicious enemy spoke ill of him to all the world. "Let him persevere," said Tasso: "his rancour gives me no pain. How much better is it that he should speak ill of me to all the world, than that all the world should speak ill of me to him!"

MEMORANDA.

DISSIMULATION.—Dissimulation in youth is the forerunner of perfidy in old age; its first appearance is the fatal omen of growing depravity and future shame. It degrades parts and learning, obscures the lustre of every accomplishment, and sinks us into contempt. The part of falsehood is a perplexing maze. After the first departure from sincerity, it is not in our power to stop. One artifice unavoidably leads us on to another, till, as the intricacy of the labyrinth increases, we are left entangled in our snare.—*Dr. Blair.*

A LIAR.—He who tells a lie is not sensible how great a task he undertakes, for he must be forced to invent twenty more to maintain that one.—*Pope.*

HABIT.—Select that course of life which is the most excellent, and custom will render it the most delightful.—*Pythagoras.*

ASSASSINATION AND OTHER CRIMES.

If a man degrades himself by gross indulgences, we can retreat upon the personal gratification which accompanies them, humbling though the explanation be ; but what are we to say of murder, assassination, and the other darker crimes by which humanity is stained, and which are often committed, so far at least as the world knows, without any motive whatever? In such cases I may allege that jealousy, anger, revenge, and such passions as suspend or destroy the reason of man, may account for these melancholy aberrations, and they often will ; but there remains behind a list of dark villainies perpetrated under circumstances altogether anomalous, and of which it would seem to be impossible to give any satisfactory solution. It may be observed as a rule of tolerably general application, that if an enormity more than usually shocking be committed, and of course much talked about, several instances of the same kind will occur in rapid succession, and at intervals not exceeding a few weeks or months. This is "imitation"; and there is nothing wonderful in it but the incredible stupidity which leads to the imagination that the guilt of a guilty action can be diminished by its frequency ! Still we do not come at those apparently motiveless crimes which startle by their magnitude, and which, if successful, can bring no advantage to the criminal, though they may end in his inevitable destruction. In a disorganised state of society, such as prevails in France, the attempts made upon the life of Louis Philippe are referred, and cor-

rectly, no doubt, to political fanaticism of the most impenetrable kind; and to a mixture of this feeling, joined to religious frenzy, we attribute the gunpowder plot in the reign of James I. But when the hand of violence was raised against George III., and still more when the existence of his grand-daughter is menaced, we are utterly staggered by the occurrence. Insanity was proved in the case of the poor wretches who threatened the good old king, and the humanity of British law made out a similar apology for the wretched creature Oxford, on most unsatisfactory grounds, as we think; when, within two years of that event, a person in the same rank of life, who could gain nothing by her Majesty's death but the gallows, and an eternity of infamy, repeats the murderous effort, and only fails by an accident!

Now, this is not a British crime; nor is it even so common a form of morbid hallucination that we should set it down at once to madness. That the insane do sometimes destroy their keepers is true, but it is a rare occurrence, and is usually the sudden impulse of a moment, suggested by the sight or possession of a deadly weapon: when, therefore, a person who has shown no unequivocal signs of mental alienation up to the hour he attempted the life of a fellow-creature, whether high or low matters not, we would require more satisfactory proof than general reasoning can furnish, that this was the effect of *disease*, and the act of an irresponsible agent. To pass, however, from that point, let us consider the recent occurrence in a social point of view.

Within less than two years, two attempts are made

upon the life of the Queen of England, by two young fellows not above twenty years of age, whom it was absolutely impossible she could have ever injured. What is the cause of this? Disease of the individual, or disease of the "social system" in which he has been reared? We should say the latter. The whole economy of modern existence is unnatural. It is feverish, glarish, and to the last degree unsatisfactory. But if there be one thing about it more *unhealthy* than another, it is the early disruption of all domestic ties, and the insatiable passion for money and distinction by which all ranks are consumed. There is but one school of sound morality—the "family hearth." There the mind receives its first and most lasting impressions; there its first virtuous emotions are evolved; and there the holiest, and consequently the best, of lessons are learnt; but if a parent is taught by the highest authorities that his children are mere beasts of burden, out of whose labour he is justified in extracting a sustenance; and if the child be taught that his independence will be achieved by a rapid transference of his services to another, who does not see that the fountains of morality are poisoned at their source, and the most sacred of all associations broken, and for ever? Suppose a boy let loose in this way at eight or ten, (and such cases happen,) what is to guide him in his future career? He may turn out well, but that is accident; and, should he turn out ill, who can wonder at it? He enters upon the business of the world without experience, of course; that he picks up as he goes along, moulding his steps on those of his acquaintances whom he desires to rival, and pushing forward, it signifies not how, forgetful of

those to whom he owes his birth, and studious of nothing but himself. He is an egotist, in fact; and, at twenty is as complete an incorporation of concentrated selfishness as the eye could dwell upon. Principle! what knows he about it, or what can he know—he is a stranger to the word and the thing. Natural affection! he buried it in the wilderness of human care when he was driven forth an infant to gain his own bread; and it would be a troublesome companion now that he has surmounted the difficulties of his outset. He is above father and mother, sister and brother, and what cares he for them—they cared little for him;—so he reasons; and when the hour of sorrow or adversity comes, he is found to be ignorant, wayward, vicious, and, if not utterly corrupt, steeped in apathy to the lips. Such are some of the fruits of our social organisation, and out of this now nearly inexhaustible supply we draw the instruments of crime of every kind and quality.

Then we have the “pleasures,” as they are called, which are provided for the poor. Places of recreation reeking with impurity, and streaming with the materials of the lowest debauchery: but you must not meddle with them; that would be to interfere with the “liberty of the subject”—too sacred an affair to be touched, whatever may come of honesty. You have, also, publications suited to the same glorious ends; chronicles of scandalous lies mixed up with political ribaldry; socialist tracts on the uselessness of virtue, and the harmlessness of vice; ingeniously constructed lessons on the folly of religion, wherein it is demonstrated that one of the most irrepressible cravings of our nature is a dream fit only to be laughed at, and

that the only god whom man should worship is man himself! You have likewise excitement of every kind, physical and moral, intellectual, corporeal, [ecclesiastical?] political, and mercantile. You do not travel as your fathers did before you, at the rate of five or eight miles an hour, but you fly through the air at the rate of thirty or forty. Everything is on the stretch. If you contemplate reform, you plan a revolution; if you desire wealth, you must make a fortune in five years; if you speculate, it must be on a gigantic scale. The day of littles and gradual progression is gone, and is succeeded by an "age of bronze," in which the whole philosophy of life must be crammed into a pounce box that it may be easily carried, or you won't carry it at all; it would be too heavy! Hence the utter absence of repose in all our proceedings, and hence, also, its inevitable effects; great energy, but also great restlessness; large purposes, but unsteady resolutions; a *contempt* for the past, but "unbounded confidence" in the present; inequality in everything, in wealth, success, speed, and power; unsatisfied ambition and unlimited hopes; and a general uneasiness spreading over the whole frame-work of society, which all feel, though they cannot tell how it is, nor why it is. Am I right?

I shall not pursue the subject further; but let any man reflect with himself, and he will see its bearing on the point under discussion. He will perceive, that in proportion as we have receded from old rules and maxims, we have advanced in material, and *frightfully retrograded in social, prosperity*; that the evil is not confined to this or that spot, but is spread over the

whole fabric of life, covering it, like a "mighty leprosy," with hideous scales; and, that if this universal malady begins to tell on the NATIONAL CHARACTER, it is no more than reason and experience would both declare to be its natural consequence. The remedy, if remedy there be, for this state of things, is not before us;—in the *absence* of an untiring, vigilant,* ever-operating, and pious SECULAR CLERGY, (for, undoubtedly, that is the kind of spiritual aid, or religious help, now most needed by our venerable apostolical church, in a view to her future glory and supremacy,) thousands, tens of thousands, of otherwise immortal souls have been lost to Christ's holy kingdom, nay, have been voicelessly abandoned to the rebel fiend—to the fallen angel from heaven's high battlements, Satan, of blackest guilt and impious memory. The "slumber" of that endeared church, heaven be praised! is now at an end,—her actual drowsiness has ceased to grieve us; but where are the conquering soldiers of the meek and lowly, the benevolent and *converting* Saviour? Where is he (thrice happy warrior!) whose delightful duty it is to bear forth, in the presence of Antichrist, the divinely illuminated banner of Immanuel? Let him stand forth. But where are Christ's true and faithful standard bearers? Where?

* Milton, who, during an active life in the most troublesome times, was unceasing in the cultivation of his understanding, thus describes his own habits: "Those morning haunts are where they should be, at home; not sleeping, or concocting the surfeits of an irregular feast, but up and stirring; in winter, often ere the sound of any bell awakes men to labour or devotion; in summer, as oft with the bird that first rouses, or not much tardier, to read good authors, or cause them to be read, till the attention be weary, or memory have its full fraught; then with useful and generous la-

NUMBER OF CRIMES.*

The number of penal enactments yet unrepealed in this country, must, in the nature of things, defeat those ends, the attainment of which ought to be the object of all law, namely, *the prevention of crime*. Our criminal code exhibits too much the appearance of a heterogeneous mass, concocted too often on the spur of the occasion, (as Lord Bacon expresses it,) and frequently without that degree of accuracy which is the result of able and minute discussion, or a due attention to the revision of the existing laws, or considering how far their provisions bear upon new and accumulated statutes introduced into parliament, often without either consideration or knowledge, and without those precautions which are always necessary when laws are to be made which may affect the property and liberty, and perhaps even the lives of thousands. To enter into the number and nature of the laws here, would occupy too much space; some notion of their san-

bours preserving the body's health and hardiness, to render light-some, clear, and not lumpish obedience to the mind, to the cause of religion, and our country's liberty."

* The Rev. T. Roberts, of Bristol, in his visits to prisons in England from time to time, has fallen in with convicts under sentence of death. In one hundred and sixty-seven instances he inquired of the malefactor, whether he had ever witnessed an execution? It turned out that all of them, excepting three, had been spectators in the crowd, upon these melancholy occasions which the legislature designed to operate as warnings to the profligate. So much for the efficacy of sanguinary examples for deterring crime.

* It is calculated that out of the whole population of London and the suburbs, about forty thousand persons subsist by thieving.

guinary character may however be formed, when it is stated that, thirty years ago, there were upwards of *one hundred and sixty* different offences which subjected the parties who were found guilty of them to death, without benefit of clergy. Although in the present day, notwithstanding the severity of the laws, the different modes of committing crime are almost endless, the principal actors in criminality may be classed under the following heads:—

Housebreakers	<i>Vulgus</i> Cracksmen, pannymen.
Highwaymen and Footpads	Grand-tobymen & spicemen.
Coiners	Bit-makers.
Utterers of base Metal	Smashers.
Pickpockets	Buzzmen, clyfakers, convey-
Stealers of Goods & Money	[ancers.
from Shops, Areas, &c.	Sneaks.
Shoplifters	Shop-bouncers.
Snatchers of Watches, Re-	
ticules, &c. from the person	Grabbers.
Horse and Cattle stealers	Prad-chewers.
Women & men who waylay	
inebriate persons for the	
purpose of Robbery	Ramps.
Receivers of stolen goods	Fences.
Forgers	Fakers.
Embezzlers	Bilkers.
Swindlers of every descrip- }	Mercers, duffers and ring-
tion, among which are . }	droppers.
Stealing from Carts and	
Carriages of all kinds	Dragsmen.
To which may be added, all }	Light-horsemen, heavy-horse-
kinds of plundering on the	men, game watermen, do.
river and its banks, on }	lightermen, Scuffle-hunters,
board shipping, barges, &c. }	copemen, &c.

The whole of these are carried on by confederacies of small parties, and at other times by gangs, when

their operations become more extensive. The forger and the highwayman are exceptions : the latter offence is generally committed by one or more, in a fit of need and in a state of desperation, without any system or plan for carrying on the practice; and it may be affirmed, that, in almost every case of this nature, the criminal never committed a like offence *before*. There have been some few instances of five or six individuals associating for the purpose of committing forgeries, but the cases are rare.

MEMORANDA.

TO CITY AND BOROUGH ELECTORS.—It is important to city and borough electors to know, that the only means provided by the Reform Act for apprizing those persons whose votes have been objected to, is the publication of a list containing the names of all such persons, which, together with the list of persons claiming to be put on the register, are made out by the overseers and exhibited at all the church and chapel doors in their respective parishes, the two first Sundays in September—namely, yesterday, the 4th inst. and next Sunday, the 11th inst.; they are also kept by the overseers for perusal without fee at all reasonable hours, from Sunday, September 4th, to Thursday, September 15th; they are also bound to supply copies of such lists to any person applying for the same, and to charge one shilling for each copy.—*Dated, August 28, 1842.*

PROPERTY OF A DROWNED PERSON.—Any one taking property from a drowned person, and converting it to his own use, is guilty of a felony.

HONEST PRIDE.—If a man has a right to be proud of anything it is of a good action, done as it ought to be, without any base interest lurking at the bottom of it.—*Sterne's Letters.*

CRIMINAL OFFENDERS IN ENGLAND AND SCOTLAND.

The most important information on legal and moral statistics will be derivable from the minute and systematic series of Returns of Criminal Prosecutions now annually presented to parliament from both ends of the land. We have now before us the respective returns for England and Scotland for 1841. The result continues to exhibit—what has often been shown by able writers—the great superiority of the Scottish system of procedure, through stipendiary prosecutors and convictions by a majority of the jury, as a means of coming at the truth, and convicting the accused when he is guilty. In England the number of persons committed for trial, or bailed, during the year, is 27,760. This includes the cases where bills were ignored by grand juries, amounting to 2,048; and likewise cases not prosecuted, amounting to 386; leaving 25,326 cases brought to trial. In these, the acquittals by findings of not guilty were 5,018, being 19 and 4-5ths per cent. of the whole number tried. In whatever way this be contemplated, it shows a fearful state of defectiveness in the law. If we presume these 5,018 men to be all innocent, then has the uncertainty and caprice of the English law exposed that number to the risks of a trial, and the certainty of ruined fortunes and a blighted reputation. If we suppose them all guilty, then has the law, by its feebleness, left society exposed to the machinations of 5,018 acknowledged criminals.

In Scotland, the total number of "offenders" (as they are very inaccurately called, since the term includes not only those who are acquitted, but those who are discharged before trial) was 3,562. From this number we have to deduct 653, who were discharged before trial; when we have 2,909 actually brought to trial. Of these the number acquitted was 216, or 7 and 2-5ths per cent. Yet, even this small number are not sent forth with a vague and general finding of not guilty, as in England. In 191 cases, the verdict is "not proven"—a declaration of suspicion, which tells the world, that the accused must produce something more than what appeared at his trial before society can receive him as an innocent man. This is a species of verdict both just and humane to those whose innocence is undoubted; for it leaves room to draw a distinct line between them and the suspected. So cautious have our juries been in returning the higher verdict, that there are only twenty-five causes (not one per cent. in the number brought to trial) where the verdict is "not guilty."

But, in the practice of our system, it must be admitted that there is a very formidable exercise of discretionary power. Thus we find, that, of the 3,562 persons charged with offences, 437, or more than 12 per cent. are discharged by the Lord Advocate and his deputies before trial. This is too large an irresponsible power to be lodged in the mere partisans of the ministry of the day. The time is perhaps past when it could be employed in the way of oppression; but, in the way of favour and protection, it may be exercised to an extent which is the more dangerous to the pub-

lic, as it is less likely to create the personal hostility which might cause it to be exposed. It is, in short, putting into the hands of a subordinate officer acting in secret that prerogative of pardon which the crown exercises under the controul of public opinion. It is right that the public prosecutor should be removable at the will of the sovereign—that he may thus, by being responsible to the home office, be under the controul of the house of commons; but the controul would be not less efficacious, and the business of the office would be more impartially and effectively performed, if the crown prosecutor, with his troop of assistants, were not removed with every change of administration.

The influence of education* on crime, as exhibited in the Scottish tables, is highly instructive. Of the 3,562 accused persons (it would have been more satisfactory if the analysis had embraced only those convicted,) 435 males and 261 females (696 in all) could neither read nor write. Of those able to “read, or read and write imperfectly,” there were 1,562 males and 676 females (2,238); of those who could read and write well, there were 476 males and 73 females (554); and of those who had a superior education, there were 39 males and three females (42). It thus appears that it is not the mere ability to read and write that will serve as a restraint on crime: education must have gone the length of opening the moral faculties, and giving the individual the means of knowing

* KNOWLEDGE is the treasure of the mind; DISCRETION the key to it; and it illustrates all other learning, as the lapidary doth unpolished diamonds. * * *

his responsibilities to society. In Scotland, where a "superior education" is so wide-spread a blessing, out of 3,530 persons (there are 32 whose state of instruction could not be ascertained), it is an instructive fact, that only 42 come from the numerous class of the well-instructed. In England, out of the 27,760, the numbers (deducting 629 not ascertained) are— who could neither read nor write, 7,312 males and 1,908 females (9,220); who could read, or read and write imperfectly, 12,742 males and 2,990 females (15,732); of those who could read and write well, there were 1,839 males and 214 females (2,053); and of those whose education was superior, there were 126 males and not one female. It would appear, indeed, that the proportion of female to male offenders decreases progressively with the increase of education.

The amendments recently made in the criminal code are conspicuous in the returns for England. These show that eighty persons were condemned to death, of whom ten were executed—nine for murder, and one for an attempt on life. As the law stood in 1831, there are no less than 2,172 cases in these returns against which the punishment of death would have been awarded. It appears that in the number of convictions for the offences for which capital punishment has been repealed, there is a decrease, during the past year, to the extent of more than four per cent. This is to be attributed to the greater certainty of conviction, where the feelings of those who pursue are not shocked by the fear of capital punishment being awarded.

FRENCH CRIMINAL STATISTICS.

Some curious results have lately been presented to the Academy of Sciences, upon the progress of crime. It has been found that the mean annual progress of crime from 1825 to 1838 has been of

79 on 2,099 (annual mean) accused of crime against persons.

25 — 894 against property other than robberies.

572 — 15,936 simple or qualified robberies.

1,237 — 38,540 condemned of any offences except simple robberies and forest crimes (*delits forestiers*).

74 — 2,030 suicides.

That giving a total of 1,990 on 59,499 crimes, offences, or suicides, or about 2,000 on 60,000, or 1-30th of the annual mean.

Two curious facts present themselves, that is, that accusations against men working in silk, wool, cotton, &c. diminish continually; while on the contrary, among domestic servants attached to the person the number frightfully augments, being no less than 1-14th annually.

Investigations have been carried on as to specific crimes at various periods of human life, and it appears that forgeries (*faux*) have a maximum at 30 to 35 years of age, which is the age of business.

Incendiaries have their maximum from 40 to 45 years.

Suicides increase nearly regularly, and have their maximum between 70 and 80 years of age.

NATIONAL EDUCATION AND NATIONAL
PREJUDICES.

The above important subjects, which, to the superficial observer, perhaps do not seem to bear much connexion, are in fact closely united with each other. As no one, to my recollection, has hitherto considered them under all their aspects, I will offer a few remarks, the result of experience, as confirmatory of this assertion. Their union is so striking to me, that I think I can prove that the latter prevents, or mars, the improvements of the former, and the former, *vice versa*, begets and fosters the latter; whilst national prejudices cripple national education, the immediate result of education is felt in the general state of public knowledge, manners, and morals. So that the best, the surest way to reform and better a people, is not to *revolutionize*, but to give them sound and proper instruction. Let us then begin with education, the more important subject of the two.

I am ready to prove, from the most respectable authorities, besides the self-evidence of acquired logic, and innate reason, supported by figures and facts:—

1stly. That modern education is not what it can, should, and must be; and that all arguments to uphold it and maintain it in its present state, are both *un-national* and *un-rational*, being, in general, mere postulates given by blinded or interested parties.

2ndly. That the dead languages are still wrongly considered as the best foundation, the basis *sine qua non* of a solid education; being, as alleged, the best

means of exercising memory, enlarging the intellect, and forming judgment. As a foundation, then, there cannot be a better one than a sound RELIGIOUS and MORAL INSTRUCTION. Well, as a basis, what becomes of the utility and propriety of the profane beauties of heathen classics, and all the *ignis fatui* of mythological fables? —the utility and propriety?

3rdly. That some modern languages and sciences, in their more improved state, and richer literature, present to the mind more difficulties to be overcome, and more intricacies to be grasped with, especially when we consider that there is no trifling with them, as is usual with Latin and Greek, that no scholar can speak, though their pronunciation were not disfigured; even the German language presents almost the same difficulties, and many more, than the dead languages. So much for the supposed necessity of rugged paths towards opening and strengthening the mind.

4thly. As to the real utility of Latin and Greek, many parents still labour under another great fallacy, viz.: that they were most useful formerly, and that they must be so now-a-days; why! formerly all learned men were *clerici catholici*! and wrote, even spoke, Latin at least. But now every classical author, whether worthy or not of record, whether moral or immoral, has been carefully and skilfully translated; consequently, that part of the learned languages which is really now useful, is precisely what is least attended to, that is, the etymology and roots that are engrafted upon modern languages, and constitute the nomenclature of most sciences.

5thly. As to the dead languages being an agreeable

pastime and accomplishment, they may be so indeed, when learned thoroughly—so would the Chinese too. But look at what an expense! They engross and absorb the best part of the time and faculties of youth; so that all other branches being mere accessories, are neglected. Hence arise also the greatest difficulties, sorrows, and abuses, of the present education, which are compensated, after all, by very little good for the few, and much evil for the many. Any experienced observer will find that there is in the world too much wit and too little sense; too much literature and too little useful learning; too much imagination and too little judgment; too much romance and too little reality; indeed, where is to be found the cause of the uneasiness, restlessness, and even infidelity in modern society? mostly in the want of a sound, moral, and religious education. Does not the unsettled state of most modern countries originate in making too many pedantic *gentlemen*, and too few useful *citizens*? As an accomplishment, then, what is the real good for society in teaching children of the middle classes how to make *asclepiades* and *iambics*, whilst they very often are deprived of the simplest notions in history, geography, physics, and mathematics? Why, in making them admire the violent republics of Greece and Rome, instead of warning their tender, youthful minds (*cereus in vitium flecti*) against their enormities—we bring up and warm strange *snakes* in our simple bosom, at a great expense of time, judgment, and money.

6thly. That the present education in our days of limited monarchy, of *juste milieu* and moderatism, being calculated to bring forth hosts of republicans,

epicureans, poets, dramatists, or novel writers—all fond of “disorderly passions” and morbid tastes—it will not be difficult to prove; and that, if England does not swarm with a much greater number of those gentlemen, it must be attributed to the healthier political constitution of this country. But we should recollect that the innumerable classical spawn is laid every year, and that they require only favourable circumstances to be hatched and let loose about the world. Now it happens, that though the classics are the main ground-work of education, from eight years to sixteen and upwards, it is the most hard and abstruse task ever imposed upon the youthful mind, and forced into it by dint of corporeal or unmeaning punishments; that the classical seeds are soon withered and lost upon so hardened and dried a soil; and, though the same number of years and the same money is spent for all, yet very few pupils can attain even a moderate *classical* proficiency; and these very few, almost to a man, constitute the fluctuating mass trained merely to inflict the same irrational system upon the following generation.* If these premises be true, the consequence will be easily deduced, that classical education, as it is generally conducted now, is an oppressive and absurd tax, supported by all for the benefit of only very few, whose only service to their country is the maintenance of the same absurd and oppressive system; and who, when unem-

* See related in the Scholastic Journal (No. 9, page 347, June 1840) the startling fact of a gentleman having advertised for a private tutor, who must have obtained honours at one of the English Universities, receiving no less than 270 applications from gentlemen offering to produce testimonials of the highest respectability, and of their literary attainments.

ployed, are a burden to their friends and selves; and, consequently are, to say the least, a very dear and heavy ornament to their country, as they can only make trite classical quotations. But the blame cannot attach to them—for they get their living by it, nor can they do any thing else—but to those parents who persist in paying so dear for the same classical whistle.

7thly. At last, I will show that the classics are not taught properly even by some new methods. The teaching of such intricate languages has not kept pace with the general improvements in arts and sciences. I will show the very little that is taught now in eight or ten years, could be taught better in as many months. I say *better*, because there might be added the most useful part of the dead languages, if not the only useful one, which is so generally overlooked, viz. : the Greek and Latin roots and etymologies, which are the keys of many languages, and the vocabularies of sciences. These observations apply only to those who are not destined for the learned professions. A. F.

MEMORANDA.

Parents are commonly more careful to bestow wit upon their children than virtue; the art of speaking well rather than doing well; but their manners ought to be their great concern.—*Fuller*.

MENDICITY.—The writer of a very elaborate article in a recent number of the Edinburgh Review, on the statistics of mendicity, states that the money annually given to mendicants cannot be less than £1,375,000; being one-third the total amount of poor rates. That on an average each begging family obtains, per annum, £55. That about one in every hundred, lives in a state of practical vagrancy. That there are 25,000 English begging families, on an average, consisting of six persons in each family.

MAN IN A STATE OF SIMPLICITY.

Man, in a state of moral innocence, or simplicity, uncorrupted by the influence of bad education, bad examples, and bad government, possesses a taste for all that is good and beautiful. He is capable of a degree of moral and intellectual improvement, which advances his nature to a participation with the Divine. The world, in all its magnificence, appears to him one vast theatre, richly adorned and illuminated, into which he is freely admitted, to enjoy the glorious spectacle. Acknowledging no natural superior but the great Architect of the whole fabric, he partakes the delight with conscious dignity, and glows with gratitude. Pleased with himself and all around him, his heart dilates with benevolence, as well as piety; and he finds his joys augmented by communication. His countenance cheerful, his mien erect, he rejoices in existence. Life is a continual feast to him, highly seasoned by virtue, by liberty, by mutual affection. God formed him to be happy, and he becomes so, thus fortunately unmolested by false policy and oppression. Religion, reason, nature, are his guides through the whole of his existence, and the whole is happy. Virtuous independence, the sun which irradiates the morning of his day, and warms its noon, tinges the serene evening with every beautiful variety of colour, and on the pillow of religious hope he sinks to repose in the bosom of Providence.

* * *

THE
JURYMAN'S LEGAL HAND-BOOK,
AND COMMON LAW MANUAL.

PRELIMINARY REMARKS.

THE famous immunity of *Trial by Jury* is, undoubtedly, of remote antiquity in this kingdom. Historians, and other able writers, have attempted to trace its original up to the first inhabitants of our country, namely, the Britons themselves. Several learned commentators, however, hold it to be most probable that this mode of trial was first adopted in England by the Saxons; to whom also the introduction of it must be attributed.

That juries of some description or other were in use long before the invasion of Britain by the Normans, is apparent; mention being made of such an institution so early as in the laws of Ethelred, fourth king in the Saxon line of succession from Alfred the Great.

There can be no hesitation in believing that a tribunal of a similar kind had been completely established throughout most, if not all, the northern nations. In fact, the earliest records of their constitutions cannot

fail to afford us some distinct traces of the remote existence of our own. And, when we consider its obvious use, and the lasting importance of such an institution, in a land of moral freedom, and of religious toleration, we cannot too highly appreciate the former, or too zealously revere the latter, without reference to its antiquity. Certain it is, that TRIAL by JURY was always so highly prized by the "good men and true" of England, that no revolutionary* procedure, however calamitous; no change of government, however disastrous to the peace-loving people, could ever prevail on the body politic to abolish this most valued immunity, which has been preserved through all ages as a "precious inheritance," down to the present day.

When the Norman duke, with his followers, at length crowned their bold invasion of England by what they pretended to call a "conquest," and William took forcible possession of its crown, and assumed to himself royal prerogatives, even then he wisely refrained from making any attempt to destroy this essential privilege ;

* DUTY OF GOVERNMENTS.—A heavy responsibility attaches to those of the higher ranks, who, during periods of agitation, support the demands of the populace for a sudden increase of power, instead of directing their desires to what may really benefit them—the redress of experienced evils. On their heads rest all the disasters and bloodshed which necessarily follow in their train. It is difficult to say which are most worthy of reprobation—the haughty aristocrats, who resist every attempt at practical improvement when it can be done with safety, or the factious demagogues, who urge on additions to popular power when it threatens society with convulsions. The true patriot is the reverse of both: he will in every situation attach himself to the party which resists the evils that threaten his country; in periods when liberty is endangered, he will side with the popular; in moments of agitation, support the monarchical party.—*Alison's History of Europe during the French Revolution.*

for we learn that in the fourth year of his reign, he not only professed to approve, but openly confirmed Edward the Confessor's laws, together with the ancient customs of the kingdom; * whereof the *Trial by Jury* is a constituent branch. Moreover, it must be confessed that civil liberty first begun its onward march toward civilization, social comfort, and refinement, under the sway of the Norman Duke. But the true value of that civil liberty, or domestic freedom, (freedom of thought, freedom of action,) remains to be carefully described. Liberty, in the abstract, may be classed amongst the greatest blessings of mankind; but, in order that it may be a mighty, moral, and well regulated liberty, it must necessarily be combined with sound government and pure religion; † without these

* *Polydore Virgil* tells us that the office of Justice of the Peace was first instituted by William of Normandy, *alias* the Conqueror!

† If Bonaparte had given the religion of the Scriptures to France after she had renounced her own anti-Christian apostacy, he would have immortalized himself; but he knew nothing of it himself, and therefore had it not to give. "The truth" (as the revelation of Heaven is emphatically called) had never made him free, and he had no idea of its power to impart spiritual, mental, or corporeal liberty to others. His own unbelief did nothing to mitigate, but rather aggravated, the evils of that modification of infidelity which he found in the national creed. "The child and champion of Jacobinism," as Mr. Pitt called him, he was at once the idol and scourge of a people whom, in rescuing from a sanguinary revolution, he enslaved by a not less sanguinary despotism. His character presents scarcely any redeeming qualities; for although he was not without such a portion of extravasated talent as enabled him to retain a blood-bought throne for a season, by the effusion of more blood, his memory will be eventually loathed even among the idolaters who have recently deified their own vanity by awarding him a public funeral. Without any regal blood in his veins, and without the educations of a prince to fit him for the throne he had usurped, his unprecedented triumphs were only the result of the Divine counsels for the punishment of the corrupted

it is liberty of the madman, who has escaped from the protecting restraint, and wholesome darkness of his cell—a liberty which is no benefit while it lasts, and is not likely to continue long.

When the great charter (*magna charta*) was afterwards made, and put under the great seal of England, A.D. 1225, and the ninth of Henry III., "TRIAL by JURY" is therein considered as the first and foremost of our constitutional immunities—the great bulwark of our national liberties; but, especially by the articles contained in the twenty-ninth chapter, which provides thus: No free citizen (freeman) shall be hurt in either his person or property, except by the lawful (legal) judgment of his *equals*,* or by the law of the land.† And it was then, and ever afterwards, es-

religion of his own and of surrounding countries; and when he had accomplished the purposes of Providence, he was thrown aside, like an useless broom, and perished ignominiously on a foreign soil, the lawful prisoner of that very nation which he had never ceased to ridicule and despise, and which he had long been pledged to exterminate from the face of the earth.

* **EQUALS; OR PEERS.**—Reeves, in his history of English law, leads us to conclude that a quibble has been raised by one or more modern writers respecting these synonymous terms, equals, or peers, "*parium suorum*;" and they stoutly insist on the word *parium* signifying peers in the sense of PEERS of PARLIAMENT, that is, earls and barons, and would have us conclude that the Latin quotation cited has no relation to the greatest of all our municipal privileges, trial by jury; but this is mere trifling. Both my Lord Coke and Sir W. Blackstone rendered them differently, and held the same to refer in the most direct manner to the *trial by jury*. The opinions of these illustrious commentators seem abundantly confirmed by a clause in 25 Edward III., stat. 5, cap. 4, which undeniably refers to the identical words in the great charter (*magna charta*)—words indeed which scarcely require explanation, or seem to demand refutation.

† *Nisi per legale iudicium parium suorum vel per legem terræ.*

seemed an immunity of the most beneficial description. Jurors, and especially citizens of London, are expected to have a good knowledge of the laws which regulate juries, and of the serious, and indeed all-important duties of jurymen : as well because each and all of them may be suddenly called upon to determine in such capacity the rights of their fellow-subjects and brother citizens ; as because their individual property, personal liberty, and life, depends upon upholding in its legal strength, the rightful and constitutional trial by jury. Nor should any gentleman in the kingdom, whether acting as a county magistrate or not, be without a competent knowledge of the JURY LAWS, and of the responsible duties which devolve on jurors at large. Much is it to be desired, also, that justices of peace*

* Justices of the Peace were made by Edw. III., A.D. 1327, for the purpose of suppressing commotions which were anticipated, in consequence of the dethronement of his predecessor. Lord Coke says, that in Easter Term, 6 Edward the First, "*primer fuit institutio justiciariorum pro pace conservanda*. Notwithstanding this, it appears that long before the time of our third Edward, the preservation of the peace was, by the common law of the kingdom, entrusted to peculiar officers, under the appellation of *custodes*, or *conservatores pacis* ; of whom some had this power by virtue of their office, such as the Lord Chancellor, and other judges and great officers of state. At the same time there were other "bold and brave" *conservators* of the king's peace (without any office or emolument) who either claimed that power by prescription, or were bound to perform the duties of the office by the tenure of their lands. Others there were, and the most numerous, who were actually chosen by the freeholders in county-court assembled, with the High Sheriff for their chairman, exactly in the same way as are those very ancient common law officers, the CORONERS, elected now-a-days. (Vide Lambard's *Eerenarcha*, cap. 3.) The class of country gentlemen to whom allusion has been just made, and who were anciently entitled to act as "conservators of the king's peace," *virtute officii*, still remain so : while the former class mentioned above have been superseded by the newly concocted class, contra distinguished as *Justices of the Peace*. I find the first sta-

would never forget that a "petty sessions" is as much a tribunal as the highest court of judicature; and that they, as judges, are bound* by the same rules of law;

tutary provision relating to this office was made in the first year of the reign of Edward the Third: when it was ordained that Justices of the Peace should be assigned by the king's commission. Their powers, at first extremely limited, were gradually extended, since that monarch's reign, as the necessities of the times and the usefulness of the office rendered the doing so expedient.

By Dalton, Justices of the Peace are defined to be judges of *record*, appointed by the CROWN to act as justices within a given circuit, for the conservation of the king's peace; and for the due and timely execution of divers things comprehended within their commission, and within divers statutes committed to their safe keeping, &c. So early as the reign of Henry VII. the duties of a Justice of the Peace had become so disagreeably onerous, on account of the numberless statute laws which justices in general had been charged to carry into effect, that few were both ready and willing to undertake the office. The illustrious Blackstone himself indeed laments, that in consequence of the infinite variety of business heaped upon Justices of the Peace, few of them took the trouble to make themselves acquainted with the highly important duties inseparable from so distinguished a public situation. With regard to the powers and duties of county magistrates at the present time, they have been most extensively enlarged. The "authority" of Justices of the Peace is either *ministerial* or *judicial*. They are said to act ministerially in cases of felony or misdemeanor, where they merely initiate the proceedings upon prosecutions, by receiving an "information" of the offence, and issuing a warrant of apprehension, and then taking the *depositions* and committing for trial, &c. Another important part of the perhaps too various duties they have to perform is the signing rates, passing accounts of parish officers, &c. And they are said to act *judicially* in all those cases of summary jurisdiction, where they are empowered to inflict punishment by fine or imprisonment. And their judicial authority is not unfrequently of a *civil* kind; they are often called upon to adjudicate between masters and their servants, landlord and tenant. Sometimes they are also called on to enforce the payment of parochial and other local rates. * * *

* It is true that a very honest man, with the best disposition to serve his neighbour, may so far be unmindful of his own interest, and the paramount interest of the country, as to suffer himself to be deceived by a knave. We are told, that "if individuals have no virtues, their vices may be of service to us."

that, for example, a person cannot be tried twice for the same offence, and that a penal statute cannot be extended; that a magistrate, to be useful, must make himself respected; and, that to be respected, he must maintain the dignity, the gravity, and, above all, the impartiality of an English judge: that if he neglects to do so, he subjects himself and his order to contempt and derision.

And, since law is admitted to be a science of no vulgar import; since it has been spoken of as "the pride of human intellect, and the collected reason of ages," by the eloquent Burke, perhaps I may be permitted to say, that I humbly conceive it to be one of the noblest occupations of the intellectual faculty.* Cicero himself tells us that it is a species of knowledge of the most extensive import; and in its nature and effects the most beneficial to mankind. Sir James Mackintosh deemed it "the most honourable occupation of the understanding, and the most immediately subservient to the general safety and comfort of the community, of all other sciences or callings in the whole compass of human affairs." The Roman orator, speaking of it as a human study, further says, "Law is a science which teaches to establish the one, and to prevent, punish, and redress the other; which extends the dominions of justice and reason, and gradually contracts, within the narrowest possible limits, the domain of *brutal force* and *arbitrary will*."

As law then is thus admitted to be the main spring of worldly affairs—the lever which sets in motion by

* Goldsmith tells us that the English laws punish vice; the Chinese laws do more, they reward virtue—*audi alteram partem*.

far the greatest number of our transactions in life, and regulates (as it were) and controuls them all—is it not the bounden duty of every Englishman (the right minded citizens of London especially, and jurors in particular,) to make themselves familiar with those laws by which the general safety and welfare of their country, and the particular laws (the jury laws) which affect their own personal freedom of action—their own civil and political rights? Surely, yes. For myself, I am anxious to accomplish (even in a very small degree) the benevolent precept of my Lord Bacon, who wished that every man knew as much law as would enable him to guard against the penalties of the former, and protect himself from the disagreeable consequences of the latter.

MEMORANDA.

A husband is bound to pay for necessities ordered by his wife, unless that wife ceased to discharge her duties by failing in fealty to her husband. The moment a wife ceases to regard her "marriage vow" the husband of that wife is discharged from his former liability.

Should a wife be turned out of doors by her husband, even if *he were then living in open adultery*, if the wife afterwards committed a similar crime, he would never again be liable to support her.

EVIDENCE.—Every man that will confess the truth must own, that some of the things of which he feels most sure, are those of which he would be utterly unable to offer such a proof as another might not find very good reason to reject.—*Lord Dudley's Letters.*

SECTION I.

OF THE JURIES NOW IN USE.

THE Grand Jury consists of gentlemen of property and station in society, selected out of the county in which they reside by the sheriff, and returned by him to sessions of the peace, and commission of "Oyer* and Terminer," and of general Gaol Delivery, to enquire, on the part of the Queen, (or King, as the case may be,) of all treasons, felonies, and other indictable offences committed within the county for which they are supposed to be competent and able to serve.

The "grand jury" must necessarily consist of twelve, at least, and may contain any greater number under twenty-four; the object of which is, that a certain majority may always be secured. Twelve or more of these must find the bill of indictment; though it is not necessary that all above that number should agree to the bill.

The qualifications of grand jurors are the same as those of petty jurors, and are pointed out by the recent

* French—*ouir et terminer* (to hear and determine) is a commission, directed to judges and gentlemen of the county to which it is issued, by virtue whereof they are empowered to hear and determine treasons, and all felonies and trespasses. The usual commission of Oyer and Terminer of justices of assize is general; but when any sudden insurrection is committed which requires instant reformation, then a *special commission* is immediately granted—as in the case of the late Chartist attempts at insurrection, both in Lancashire and Yorkshire.

important statute for consolidating and simplifying the jury laws, viz. the 6th Geo. IV. cap. 50. See sec. ii.

A bill of indictment being laid before the grand jury, it is their particular province to determine whether it is a true bill, (in order, that if so, it may be brought before a petty jury for final adjudication,) or to reject it, in toto. Two indictments for the same offence, as one for the *felony*, under a statute, and the other for the *misdemeanour*, at common law, ought not to be preferred at the same time.

The witnesses in support of the charge are to be called in and examined by the grand jury, or, with the consent of the grand jury, by the prosecutor. The prosecutor may be represented by attorney, who will examine the witnesses.

The witnesses must be examined on oath; and the indictment may be found upon the oath of one witness only, except for high treason, which requires two witnesses, and except in cases in which it is otherwise directed by a special Act of Parliament.

The defendant is not allowed counsel or attorney, or any person skilled in the law, as an advocate; the investigation of the grand jury not being conclusive.

The evidence which a grand jury may require should be the same, whether written or parol, (that is, by word of mouth,) as may be necessary to support the indictment at the trial. If the grand jury should find the bill upon improper evidence at first, if the prisoner be afterwards tried on legal and sufficient testimony, the conviction CANNOT be interfered with.

Grand jurors are, by the terms of their oaths, bound not to disclose what transpires during the investiga-

tion ; and if they do so, they are finable. Any person who may be present on the occasion is laid under the same obligation ; and any individual present in court, though not “subpœnaed,” may, on a criminal prosecution, be compelled to answer questions.

The evidence having been considered, if *twelve* of the grand jury deem the charge sufficiently proved, their clerk indorses on the indictment “A true bill;” if otherwise, “No true bill.”

The grand jury may not find *part* of the indictment true, and part false ; but must find either a true bill, or *ignoramus* for the whole ; and if they find it true for *part* only, the whole is void, and the party cannot be tried upon it, but must be indicted anew.*

Where there are two counts in the indictment, as one for a riot and another for an assault, the bill may be rejected as to one count and affirmed as to the other.† And where a bill is presented for murder, the grand jury, according to Mr. Baron Garrow, (at the Staffordshire summer assizes, 1822,) in *Rex v. Caulkin*, may find a true bill for manslaughter only.

A PETTY JURY, consisting of twelve, after a true bill has been found by the grand jury, are to try the truth of the fact the prisoner stands accused of, and to find him guilty or not guilty. It is the especial duty of a petty jury to try the truth of some matter of fact alleged by one party and denied by another. Hence a petty jury is called on to decide, not only in cases where “bills of indictment” have been previously found true by a grand jury, as for murder and the like, but

* 2 Hawkins, c. 25, s. 2.

† *Rex v. Fieldhouse*.

also to determine between man and man in civil actions, as for trespass, trover, questions of debt, &c.*

SPECIAL JURIES are said to have originated in trials at LAW in which the cases were deemed of too great nicety for the adjudication of ordinary jurors, or where the sheriff was suspected of partiality in making his return of the persons called on to serve.

Upon motion in court, "a special jury" is allowed either to the plaintiff or defendant in the trial of any cause, civil or criminal, treason and felony excepted.

* Trial by *twelve judges* was introduced into Denmark by Regninus, as early as A.D. 820; and an account of that institution is to be found in the works of Olaus Wormius. They adjudicated on all cases, and it does not appear that their verdict required unanimity of opinion. The ancient Norman law bore a close similarity to the Danish. Our Saxon monarchs *did not punish even their bondsmen with imprisonment for debt*. Alfred displaced and (*lex talionis*) imprisoned one of his judges for daring so to do; and hanged Judge Cadwine, because he condemned one Hackwy to death on a verdict obtained by his dismissing three dissentients, and replacing them by three others nominated by himself. During the reigns of Norman William (who swore, on his coronation, to observe the laws of Edward the Confessor, on which Magna Charta was founded), Rufus, and Hen. I. and II., no man was imprisoned, even for a mortal crime, unless first attainted on the verdict of twelve men. A man could not be kept in prison for a nonbailable offence until the justices in eyre came, but under the writ de Otio et Atia, the sheriff was directed to relieve him. The *Myrror of Justice*, cap. v. sec. 1, complains of the imprisonment of men's persons as an abuse, though for breaking gaol. Glanville, cap. iii., holds the same doctrine; and as this last authority is supposed to have been written before the promulgation of Magna Charta, his opinion corroborates the affirmation of Coke, that Magna Charta is but "declaratory of the ancient common law." The commencement of the charter sworn to by William the Conqueror, on his coronation, was drawn up by a council of the kingdom, in accordance with the existing laws of Edward the Confessor, and is thus: "Volumus etiam ac firmiter præcipimus et concedimus ut omnes liberi homines totius monarchiæ regni nostri." It is certain, that traces of trial by jury are to be found in Scotland as early as David I., 1124.

The party who demands such special jury, however, must pay the additional fees and expenses, unless the judge "certify" on THE RECORD that the cause required adjudication of a special jury.*

PARTICULAR INQUEST JURIES are of various kinds; as that of the CORONER, whose duty it is, when a man is slain, to inquire by whom and by what means his death was actually produced; and INQUESTS OF OFFICE taken before the Sheriff, as on an action in which the plaintiff is to recover damages only, if the defendant tacitly admit the fact charged by his silence. In this case the court sends a writ to the sheriff to inquire by the oath of twelve men at least what damage the plaintiff has sustained.†

As it respects the *Coroner's* jury, upon inquests taken before him; the power of summoning jurors is

* It seems, that we are not indebted to the barons of Runnymede for the origin of that immortal right, a trial by jury, but for renewing the ancient laws, and, as it were, re-establishing the freedom of their country; which had, from the "remotest antiquity, been a free nation." Many of our ancient statutes, incidentally shew the high veneration in which that charter was held, which was thirty-three times confirmed, and "upon which," the learned Coke says, in his second Institute, "as out of a root, many fruitful branches of the laws of England have sprung." In our own age, when it was deemed necessary to have a perfect copy of the statutes of the kingdom published, it was not thought either safe or dignified to copy Magna Charta, even from the roll *Inspeximus* of 28th of Edward I.; and a commission was appointed to visit all the universities, archbishops, bishops, and archives of the united kingdom for an original of Magna Charta in particular, and for all other statutes and legal documents. Mr. Annesley, attached to that commission, discovered in Lincoln Cathedral one copy of Magna Charta coeval with John. At the same period, the *Sententia Excommunicationis* against the breakers of the great Charter was found in Wells Cathedral.

† Cro. Car. 414. 6 Mod. 43. Cath. 362. 1 Veru. 113.

given to the coroner, who is to issue his precept to the constables of the four, five, or six next townships, to return a competent number of good and lawful men of their townships to appear before him, at a certain place to be named, to make inquisition, &c. (4 Edward I. stat. 2.) Or, the coroner may send his precept to the constable of the hundred.*

It is now the usual practice to summon the jury from the neighbourhood.†

By the 8th Hen. VI. cap. xix. it is enacted, that "the inquiry shall be made by persons having lands of the yearly value of forty shillings;" but it is not now the practice to return a jury having such qualifications.

By the late Jury Act (6 Geo. IV. c. 50, sec. 52,) it is specially provided, that "persons required to serve as jurors on inquests taken before a coroner by virtue of his office, need *not* be qualified according to the Act, but that such inquests may be taken by jurors of the same description as usual before the passing of such Act.‡

* Wood's Institutes, book iv. cap. 1.

† 2 Hawkins, cap. ix. sec. 22, and other authorities.

‡ LORD CAMPBELL ON CORONER'S INQUESTS.—He is charged with murder only by the coroner's inquest, on which, technically speaking, he may be lawfully tried and convicted, but which I must use the freedom to say in no degree rebuts the presumption of innocence. For the deliberate verdict of twelve Englishmen on their oaths, after listening to a sound exposition of the law, I have the most unfeigned respect; but for the inquest of a coroner's jury in a case of sudden death I have no respect at all. The constable gets together whom he can first find, no qualification being required in the juryman. They meet amidst the fumes of an alehouse. Whatever rumours have been spread in the neighbourhood respecting the fate of the deceased and the supposed murderer, they have heard; and the more horrible and improbable such rumours are,

The number of the coroner's jury is not *determinate*; being either twelve or *more*. It seems, however, from decided cases, that such a jury must be composed of twelve at the least, and that twelve must agree in the verdict.*

If the constables make no return, or the jurors returned appear not, their defaults are to be notified to the coroner; and the constables or jurors in default shall be fined by the judge of assize †

Coroners have no power to impose any fine or amercement; ‡ and, though by the 53d section of the recent Jury Act, it is enacted that "if any man having been duly summoned and returned to serve as a juror in any county in England, Wales, or in London, upon any inquest or inquiry before any sheriff or coroner, &c.

they are the more apt to believe them. To calm their imaginations, they are by law required to view the dead body, with its convulsed countenance and ghastly wounds, before they begin their investigation; and the coroner, who ought, as judge, to explain to them nice legal distinctions and to enlighten their understandings, may be a low legal practitioner, unqualified for such duties, or a person wholly uninitiated in law, who has been elected to the office by popular arts, and who seeks to inflame the prejudices of the jury instead of allaying them. In extenuation of the recklessness with which a verdict of wilful murder may be pronounced by such a tribunal, I should mention, that the jury and the coroner are not aware of the solemnity or consequences of the act about which they are employed. Nor is this to be wondered at; for I believe I may positively assert, that in the annals of the administration of criminal justice in this country, there is not a single instance of a conviction for murder on the finding of a coroner's inquest. In the vast majority of instances, the instrument is quashed for gross informality; and, if there be any ground for the charge, an indictment for murder is found by a grand jury.—*Lord Campbell's Speeches.*

* 6 Dowling and Ryland's Reports, 196; 4 Barnewall and Cresswell, 138.

† 2 Hale, 59. and other authorities.

‡ 2 Institutes, 136; Jervis, 225.

shall not, after being called upon three times, appear and serve as such juror, any such sheriff, coroner, &c. are authorised, in court, to impose a fine upon each defaulter not exceeding five pounds;" yet, judging from the context, and from a comparison of the 53d section with that which precedes it, (which plainly excepts inquests held by the coroner, *by virtue of his office*, from the operation of the Act,) it would seem that the power thus conferred on coroners to fine defaulters, is only meant to apply to cases in which they hold inquests *by virtue of a writ of inquiry*. This exception it is important to notice.

The jurors having appeared, they are to be sworn and charged by the coroner to inquire, *super visum corporis*, (upon view of the body,) how the party met with his death.*

The coroner may take inquisition regarding the death of any person in no other way except upon view of the body. If therefore the body be buried before he arrives, he must cause it to be disinterred, which he may lawfully do, "within any convenient time," as in fourteen days.†

The inquest must be taken within a reasonable (fourteen days') time after the death of the party; hence six months has been held too long a delay.‡

The body should be inspected from head to foot.|| If the whole of the body cannot be viewed, the coroner cannot do his duty: the duty of inquiry devolves in that case on local magistrates.

If the body be not found, or shall have laid so long

* 2 Hale, 60, and others.

† 2 Hawkins, cap. ix. sec. 23.

‡ 1 Strange, 22; Salkeld, 377. || Rex v. Bond, 1. Strange, 22.

before the view that no information can be obtained from its inspection, or if there be danger of infection by digging it up, the coroner's duty, unless he act under special commission, devolves in like manner on justices, who, without viewing the body, may take an inquest by the testimony of one, two, or more witnesses.

The coroner and his jury are compelled to hear evidence on all hands, if offered, and that upon oath, solemnly administered, &c.

The coroner's inquisition, where it finds a verdict of *felo-de-se*, or that the death of the deceased was inflicted by his own hand, he not being insane or non-compos at the time, cannot afterwards be traversed. Neither can it in cases of flight in persons accused of felony; nor in cases of deodand.* SUCH INQUISITIONS ARE in themselves *bond-fide convictions*, without the possibility of appeal; and it is therefore imperiously incumbent on a coroner's jury to hear all that can be said on either side, and to decide with care. The case is different where a person is found guilty by the coroner's inquest of the homicide (or murder) of the deceased on whom the inquest is holden; for then the accused, though he must be arraigned on the verdict of the inquisition, must be so arraigned before another jury, when he may dispute the truth or justice of the former verdict; he

* Latin, *Deo dandum*, (a thing given to the Almighty,) was originally intended to be devoted to the purposes of prayer as a propitiation to God for the untimely death of one of his creatures. The term is now used to signify the forfeiture of the horse, carriage, or other article, (or a sum of money, in lieu thereof,) which by accident causes the death of a human being, and therefore is deemed forfeited to the king, or the lord of the manor as grantee of the crown.

must be put on his trial for the offence, and can be convicted only by another tribunal of a more learned, solemn, and superior kind.

By the 7 Geo. IV. cap. lxiv. sec. 4, all coroners in inquisitions where persons shall be indicted for murder or manslaughter, or as accessories to murder before the fact, are required, under pain of summary penalty, to take the evidence given before the jury, or the "material part" of it, in writing. They are also required to bind witnesses by recognizance to appear at the trial, and give their testimony, &c.

MEMORANDA.

Peevish contradictions about trifles are infinitely more vexatious than a generous opposition, where matters of importance are involved.

Let no man say that his idle words are inconsequential; we have known the characters of men to be destroyed by a mere rumour.

That lawyer who does not believe in an original Lawgiver and Judge of the universe, ought by no means to be entrusted with the cause of a single client. That physician who doubts whether or no he himself hath a soul, ought not to have the care of another man's body. And that clergyman who, in eating, drinking, &c. does not keep a strict eye on his body, is most unfit to undertake a cure of souls.—*Skelton*.

SECTION II.

OBJECTS OF THE NEW JURY ACT.

(Geo. iv. cap. 50.)

THE “qualifications” of Grand and Petty Jurors—of persons exempted from serving on juries, and of those legally disqualified; together with the qualifications of jurors in the city of London and county of Middlesex; I shall now proceed to show

It may be as well that I first direct the reader’s attention to the objects of the New Jury Act, as clearly explained in its first section. To consolidate, first, and simplify the laws relative to the qualification and summoning together of jurymen, and the organization of juries in England and Wales. Secondly, To increase, rather than diminish the number of citizens qualified to serve on juries. Thirdly, To change and amend the mode of striking “special juries.” Fourthly, and lastly, In several respects to improve the surviving enactments—to render the existing laws less unworthy of ourselves and our country.

The particular persons now qualified and made liable by this Act to serve on juries for the trial of all “issues joined” in any of the queen’s courts of record at Westminster, in the superior courts (civil or criminal) of the counties palatine, and in all courts of assize, nisi prius, oyer and terminer, and gaol delivery, to be tried in their respective counties; also, on all grand and petty juries in courts of sessions of the peace, in

the county, riding, or division, in which they shall respectively reside :—

All persons between the ages of *twenty-one* and *sixty* years, residing in any county in England, who has in that county, either in his own name or in trust for him, *ten pounds* a year above reprises, (that is, of ten pounds a year clear yearly income,) in lands or tenements, whether of freehold, copyhold, customary tenure, or of ancient demesne ; or in *rents* issuing out of any such lands or tenements, or in such lands, tenements. and rents *taken together*, in fee simple, fee tail, or for the life of himself or some other person ; or who has within the same county, *twenty pounds* per annum, above reprises, in lands or tenements *held by lease* or leases, for the absolute term of twenty-one years, or longer, or for any term of years determinable on any life or lives ; or who, being a householder, shall be rated or assessed to the poor rate, or to the inhabited house duty in the county of *Middlesex*, on a value of not less than *thirty pounds*, or in *any other county* on a value of not less than *twenty pounds* ; or who shall occupy a house containing not less than fifteen windows.

Every man between the aforesaid ages, residing in any county in *Wales*, and being *there* qualified to the extent of three-fifths of the foregoing qualifications, shall be qualified and liable to serve on grand juries for the trial of all issues joined in the courts of sessions of the peace, and on petty juries, for the trial of all issues joined in such courts of sessions of the peace, in *every county* of *Wales* in which every man so qualified shall respectively dwell.

The following persons are “absolutely freed and

exempted from being returned, and from serving, upon any juries or inquests whatsoever :”—

Peers of parliament.

Judges of the Queen's courts of record at *Westminster*.

Clergymen in holy orders.

Priests of the Roman Catholic faith, who shall have duly taken and subscribed the oaths and declarations required by law.

Persons who shall teach or preach in any congregation of protestant dissenters, whose place of meeting is duly registered, and who shall follow no secular occupation, except that of a schoolmaster, producing a certificate of some justice of the peace of their having taken the oaths, and subscribed the declaration as by law required.

Sergeants and barristers at law actually practising.

Members of the society of Doctors of Law, and advocates of the civil law, actually practising.

Attornies, solicitors, and proctors, duly admitted in any court of law or equity, or of ecclesiastical or admiralty jurisdiction, in which attornies, solicitors, and proctors, have usually been admitted, actually practising, and having taken out their annual certificates.

Officers of any such courts actually exercising the duties of their respective offices.

Coroners of counties and boroughs.

Gaolers and keepers of houses of correction.

Members and licentiates of the Royal College of Physicians in *London*, actually practising.

Surgeons being members of one of the Royal Col-

leges of Surgeons in *London, Edinburgh, or Dublin*, and actually practising.

Apothecaries certificated by the Court of Examiners of the Apothecaries' Company, and actually practising.

Officers in her Majesty's navy or army on full pay.

Channel and river pilots licensed by the Trinity House of *Deptford, Stroud, Kingston-upon-Hull, or Newcastle-upon-Tyne*; and all masters of vessels in the buoy and light service, employed by either of those corporations; and all pilots licensed by the Lord Warden of the Cinque Ports, or under any Act of parliament or charter for the regulation of pilots in any other port.

The household servants of her most gracious Majesty, her heirs and successors.

Officers of customs and excise.*

High constables, parish clerks, sheriffs' officers.

The above special exceptions are constituted by the second section of the new Jury Act, which further provides, that "all persons exempt from serving upon juries in any of the courts aforesaid, by virtue of any 'prescription,' charter, grant, or writ, shall continue to have and enjoy such exemption in as ample a manner as before the passing of this Act."

By the 42d section it is enacted, that no person shall be returned as a juror to serve at any session of "nisi prius," or of gaol delivery in the county of *Middlesex*, who has served as a juror at either of such sessions in

* Clerks in all other public offices are not exempted by this Act, which must have been an oversight, there does not appear to be any good reason for exempting officers of customs and excise only.

the said county, in either of the two terms or vacations next immediately preceding, and has the sheriff's certificate of having so served; and no person shall be returned as a juror to serve on trials before any court of assize, nisi prius, oyer and terminer, or gaol delivery, or any of the courts of the counties palatine, who shall have served as a juror at any of such courts, within one year before in Wales, in the counties of Hereford, Cambridge, Huntingdon, or Rutland, or four years before in the county of York, or two years before in any other county, and has the sheriff's certificate of having so served; and no man shall be returned to serve on any grand or petty jury, at any session of the peace to be holden for any county, riding, or division, in England or Wales, who has served as a juror at any such session within one year before in Wales, or in the counties of Hereford, Cambridge, Huntingdon, or Rutland, or two years before in any other county, and has the certificate of the clerk of the peace of having so served; but the provisions contained in this section are not to extend to *grand jurors at the assizes*, nor to *special jurors*.

By section 48, no justice of the peace shall be summoned or impanelled as a juror, to serve at any session of the peace for the jurisdiction of which he is a justice.

By section 49, the inhabitants of the city and liberties of Westminster are exempted from serving on any jury at the sessions of the peace for the county of Middlesex.

And by section 50, no man shall be impanelled or returned to serve on any jury for the trial of any capi-

tal offence in any county, city, or place, who shall not be qualified to serve as a juror in civil causes within the said county, city, town, or place.

By the same section it is enacted, that the qualifications herein before required for jurors shall not extend to the jurors or juries in any liberties, franchises, cities, boroughs, or "towns corporate," not being counties; or in any cities, boroughs, or towns, being counties of themselves, which shall respectively possess any jurisdiction, civil or criminal; but that in all such places, the sheriffs, bailiffs, or other ministers, having the return of juries, shall prepare their panels in the usual manner.

As concerning the city of *London*, it is provided by the same section, that no man shall be impanelled or returned by the sheriffs of the city of London as a juror to try any "issue joined" in her Majesty's courts at *Westminster*, or to serve on any jury at the sessions of Oyer or Terminer, Gaol Delivery, or Sessions of the Peace, to be held for the said city, who shall not be a householder, or the occupier of a shop, warehouse, countinghouse, chambers, or office, for the purpose of trade or commerce, within the said city, and have lands, tenements, or personal estate, of the value of one hundred pounds, at the least.

And, by the 52d section it is enacted, that no man shall be liable to be summoned or impanelled to serve as a juror in any county of *England* or *Wales*, or in *London*, upon any inquest or inquiry to be taken or made by or before any sheriff or coroner, by virtue of any writ of inquiry, or by, or before any commissioners appointed under the great seal, or the seal of the court

of Exchequer, or the seals of the courts of the counties Palatine, who shall not be duly qualified, according to this Act, to serve as a juror upon trials at Nisi Prius in such county in England, or Wales, or in London, respectively : but provision is made, that this enactment shall not extend to any inquest to be taken by or before any coroner of a county by virtue of his office, nor to any inquest or inquiry to be taken or made by or before any sheriff or coroner, of any liberty, franchise, city, borough, or town corporate, not being counties ; or of any city, borough, or town, being respectively counties of themselves ; but that the coroners, in all counties, when acting otherwise than under a writ of inquiry, and the sheriffs and coroners in all such places as are herein mentioned, may respectively make all inquests and inquiries by jurors of the same description as they have been used and accustomed to do before the passing of this Act.

The following persons are, by the third section of the Act, disqualified from serving on juries or inquests in any court, or on any occasion whatsoever :—

First. All persons not being natural born subjects of the Queen.

To this disqualification an exception is made by the 47th section, which provides, that “ nothing herein contained shall be construed to extend to deprive any alien, indicted or impeached of any felony or misdemeanor, of the right of being tried by a ‘ jury de medietate linguæ ;’ * but that on the prayer of every alien

* By a jury de medietate linguæ, is meant a jury or inquest impanelled, whereof the one half consists of natives, and the other of foreigners.

so indicted or impeached, the sheriff or other proper minister shall, by command of the court, return for one half of the jury a competent number of aliens, if so many there be in the place where the trial is had, and if not, then so many as shall be found in the same place, if any; and that no such alien juror shall be liable to be challenged for want of freehold or any other qualification required by this Act, though he may be challenged for any other cause in like manner as if he were qualified by this Act."

2. Persons who have been or shall be attainted of any treason or felony, or convicted of any crime that is "infamous," unless he SHALL HAVE obtained a free pardon.

3. Any person who is under outlawry or excommunication.

MEMORANDA.

THOUGHTS.—A man would do well to carry a pencil in his pocket, and write down the thoughts of the moment. Those that come unsought for are commonly the most valuable, and should be secured, *because they seldom return.*—Lord Bacon.

PASTIME.—He that follows his recreation instead of his business, shall in a little time have no business to follow.

CIVILITY.—Civility is a kind of charm that attracts the love of all men; and too much is better than to show too little.

SECTION III.

TO PREPARE LISTS OF PERSONS QUALIFIED AND
 LIABLE TO SERVE ON GRAND AND PETTY JU-
 RIES—PENALTIES IMPOSED ON CLERKS OF THE
 PEACE, SHERIFFS, &c. FOR NEGLECT OF DUTY, &c.

THE clerk of the peace in every county, riding, and division, in England and Wales, must, within the first week of July in every year, issue and deliver his warrant in the form prescribed in the schedule of the 6th Geo. IV. cap. 50, to the high constables of each hundred or other district, by which he shall command them to issue their precepts to the church-wardens and overseers of the poor of the respective parishes, and to the overseers of the poor of the several townships within their respective constablewicks, requiring them to prepare and make out, before the first day of September then next ensuing, a true list of all persons residing within their respective parishes and townships qualified and liable to serve on juries, as prescribed by 6th Geo. IV. cap. 50, as explained in the former chapter.

Every such clerk of the peace is to cause a competent number of warrants, precepts, and returns, to be printed according to forms prescribed,* and the cost thereof to be paid by the county, riding, or division; and he must annex to every warrant a sufficient number of precepts and returns for the use of those by whom the same are to be issued and prepared.

* See Appendix for forms.

Within fourteen days after the receipt of such warrant of the clerk of the peace, every high constable shall issue and deliver his precept,* together with a sufficient number of the printed forms of returns,† to the churchwardens and overseers of the poor of the several parishes and townships within his constableness, requiring them to prepare and make out a true list of all persons residing therein, qualified and liable to serve as jurors as aforesaid. And when in any hundred, or any like district, there shall be two or more high constables, the clerk of the peace shall issue his warrant with a competent number of such precepts and returns to every one of such high constables, each of whom shall be individually liable for the due performance of the matters commanded in such warrant throughout the whole of such hundred or other district, and shall, for non-performance thereof, be liable to all penalties imposed by the Act upon a high constable. Provision is also made, that where, in any parish, there shall be no overseers of the poor, except the churchwardens, such churchwardens shall be deemed *churchwardens and overseers* within the meaning of the Act; and also, that where any parish or township shall extend into more than one hundred, or other like district, either in the same or different counties, such parish or township shall be deemed to be within that hundred or district in which the principal church of such parish or township shall be situate, &c.

At a special petty sessions to be holden for that purpose before the first day of July in every year, the

* For particular form, &c. see Appendix.

† See Appendix.

justices of the peace of any division in England or Wales, may make an order for annexing any "extra-parochial" place to any parish or township adjoining thereto, and a copy of such order, within five days from the making thereof, must be served upon the churchwardens and overseers of such adjoining parish, or upon the overseers of such adjoining township; and such extra-parochial place is thenceforward to form an integral part of such parish or township, for the purpose of making jury-lists under the new Act; and returns of persons qualified and liable to serve on juries, whether residing in the parish or township, or such extra-parochial place thereto annexed, are to be made by the churchwardens and overseers under the same penalties as in other cases.

After the receipt of the high constable's precept, the churchwardens and overseers are to prepare, in alphabetical order, a true list of every person residing within their respective parishes or townships qualified and liable to serve on juries as aforesaid, with the Christian and surname written at full length, and with the true place of residence, the title, quality, calling, or business, and the nature of the qualification of every such person, in the proper columns of the prescribed form of return.*

The churchwardens and overseers of each parish having made out lists of qualified persons in the manner prescribed, are respectively, on the the three first† Sundays in the month of September, to fix a true copy of such list upon the principal door of every church,

* For particular form, see Appendix. † Refer to the Act itself.

chapel, and other public place of religious worship within their respective parishes or townships, having first subjoined to every such copy a notice, stating that all objections to the list will be heard by the justices of the peace, at a time and place to be mentioned in such notice ; and having also signed their names at the foot of such copy, and kept the original list, or a true copy thereof, to be perused by any of the inhabitants at any reasonable time during the three first weeks of the month of September, without fee or reward, in order that notice may be given of the omission of persons qualified, or of the improper insertion of men who ought to have been omitted. A proper number of the copies of such lists are to be printed at the expense of such parishes, &c.

The justices of the peace in every division in England and Wales, within the last seven days of September in every year, shall hold a petty sessions, on some day and at some place, of which notice shall be given before the 20th of August preceding to the high constable and to the churchwardens and overseers of every parish and township within such division. And the churchwardens and overseers shall then and there produce the list of persons qualified and liable to serve on juries within their respective parishes or townships, prepared by them as before directed, and shall answer upon oath any questions concerning their lists which the justices may put to them ; and if the name of any person not qualified and liable, as aforesaid, be inserted in any such list, the justices may, upon the oath of the party, or other proof, or upon their own knowledge, that he is not qualified and liable, strike his name out.

They may also strike out the names of all persons disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body; and they may insert in such list the name of any person omitted therein, and rectify any errors or omissions in respect to name, place of abode, title, quality, &c. of any person included in such list. Especial provision, however, is made, that no man's name, if omitted, shall be inserted in such list, nor shall any omission or casual error in description be "corrected" by such justices, unless upon the application of such men respectively, or unless they shall have had notice that an application for the purpose would be made to such justices, or unless such justices at sessions, or two of them, shall cause notice to be given to such persons, requiring them to show cause at some adjournment of such petty sessions, to be holden within four days, why their names should not be inserted, or why any omission or casual error in their description should not be properly corrected, &c.

After the lists shall have been duly corrected at the petty sessions, they shall be allowed and signed by the justices, received by the high constable, and delivered by him to the court of quarter sessions next holden for the county, riding, or division, on the first day of its sitting, with his confirmation on oath of his receipt of such list from the petty sessions, and that no alteration in the same hath since been made.

For their assistance in completing the lists, pursuant to the intention of the legislature, the churchwardens and overseers of every parish and township, on request made by them, at any reasonable time between the 1st

of July and the 1st of October in every year, to any collector or assessor of taxes, or to any other officer having the custody of any duplicate or tax-assessment for such parish, &c., shall have permission to inspect any such duplicate or assessment, and take from thence the names of such persons qualified to serve on juries as may appear to them necessary: and every court of petty sessions, and justice of the peace, shall, upon the like request to any collector or other such officer, or to any churchwardens or overseers having the custody of any poor rate within their respective divisions, have the like permission to inspect and make extracts from any such duplicate, tax assessment, or poor rate, for the purpose of assisting them in the re-construction and settlement of the jury lists within their respective districts.

After the lists shall have been returned by the high constable to the court of quarter sessions, it is the duty of the clerk of the peace to keep the same among the "records" of the sessions, arranged with every hundred in alphabetical order, and every parish or township within such hundred likewise in alphabetical order, and to cause the same to be well and truly copied in the same order, in a book to be provided by him, at the expense of the county, riding, or division; which book he is to deliver to the sheriff of the county, or his undersheriff, *within* six weeks after the close of the sessions. And the said book is to be called "the Jurors' Book for the year", (the *calendar* year for which such book is in use being inserted.) The then sheriff, on quitting his office, shall deliver the same to his successor; and every jurors' book so prepared, is to be brought into

use on the 1st of January after it shall be delivered by the clerk of the peace to the sheriff or under-sheriff, and to be used for the year then next following.

As it respects the city of *London*, it is specially enacted by the 6th Geo. IV. cap. 50, that the lists of persons resident in each ward in the city of London, qualified as mentioned in the preceding chapter, shall be made out, with the correct addition, and the place of abode of each person by the parties heretofore accustomed in each ward to make out the same from year to year; and that the shop, warehouse, countinghouse, chambers, or office, of each man so qualified, shall be deemed and taken to be *the place of abode* of every occupier thereof, for the purpose of making jury-lists under the said enactment.

The penalties on high constables for neglecting to issue precepts, &c. are prescribed by the forty-fourth section of the Act, which enacts, that if any high constable, for fourteen days after the "warrant" of the clerk of the peace shall be served on him, or *left at his abode*, refuse or neglect to issue his precept to the churchwardens and overseers of any parish, &c. or to annex to such precepts such a number of forms of return as he shall really deem sufficient, or to supply an additional number on demand, or, in case of his not having them, shall refuse or neglect to apply to the clerk of the peace for the same, so as to deliver them to the party demanding within three days after his receipt thereof; or if, after due notice, he neglect or refuse to attend at any petty sessions or adjournment thereof, or to receive any lists there tendered by the justices, or to deliver the same to the next quarter ses-

sions, at the time and in manner directed ; or if he shall make any alteration in any such list *after his receipt thereof*; every high constable so offending, shall, for every such offence, forfeit a sum not exceeding ten pounds, nor less than forty shillings, at the discretion of the justices before whom he shall be summoned and convicted.

The next section prescribes the penalties for neglect in *churchwardens* and *overseers*, as I shall proceed to show. If any churchwarden or overseer of any parish or township shall refuse or neglect (unless prevented by sickness) to assist in making out any list required by the Act, so that the same shall not be made out at the time and in manner directed ; or shall wilfully omit the name of any person which ought to have been inserted therein, or shall wilfully insert the name of any person which ought not to be inserted therein, or shall take any money or other reward for omitting or inserting any person whatsoever, or shall wilfully insert a wrong description of the name, place of abode, addition, &c., or the nature of the qualification of any man ; or shall refuse or neglect, if the forms of return delivered by the high constable shall be insufficient, to apply for a proper number, so that the lists may be made out at the time and in the manner directed ; or shall refuse or neglect to fix a copy of such list, duly signed, or to subjoin thereto the notice required by the Act, on the principal door of any church, chapel, or other public place of religious worship, within their several parishes or townships, on any of the Sundays on which the same ought to be so fixed ; or shall refuse to allow any inhabitant to inspect such list, or a true copy thereof, *gratis*

at any reasonable time during the three weeks prescribed for that purpose; or shall, on due notice, refuse or neglect to produce such list at the petty sessions, or to answer such questions touching the same as shall be there put, or to attend at such petty sessions or adjournment thereof; or shall refuse to allow the said petty sessions, or any justice of the peace, on due request, to inspect or make any extracts from the poor rate of any parish or township within their divisions, such rate being in their custody;—every churchwarden or overseer so offending shall, for every such offence, forfeit a sum not exceeding ten pounds, nor less than forty shillings, at the discretion of the justice before whom such offender shall be convicted of the offence of wrongful insertion or wilful omission, shall forthwith, in writing, certify the same to the clerk of the peace of the county, &c. in which the parties improperly omitted or inserted shall reside, who shall cause the list to be corrected according to such certificate, and also give notice thereof to the sheriff or under-sheriff, who shall amend the jurors' book with all possible care.

The penalties on *clerks of the peace, sheriffs, &c.* for neglecting their duty concerning the lists and returns of persons qualified and liable to serve on juries, are imposed by the 46th section, which enacts, that if any *clerk of the peace* shall refuse or neglect to cause a proper number either of warrants, precepts, or forms of return, to be printed as before directed, or shall not issue to the high constable, the warrant and precepts as before directed, or shall not annex to the same a sufficient number of the forms of return, or shall neglect to deliver such additional number as may be applied

for within three days, or shall refuse or neglect to provide a jurors' book as before directed, or to deliver the same to the sheriff or under-sheriff within the time allowed, or to give notice to the sheriff or under-sheriff of any improper insertion or wilful omission certified to him by any justice of the peace, or to deliver to any man who shall have duly served as a grand or petty juror at the sessions of the peace, a certificate of his service, or to transmit to the sheriff a list of the men summoned, and who have attended and served within the time and in manner directed: or, if any *clerk of petty sessions* shall neglect or refuse to give notice of such sessions to any high constable, or to the churchwardens and overseers of any parish or township; or if any *sheriff or under-sheriff* of a county shall make or cause to be made any alteration in the list of jurors contained in the jurors' book, (except in consequence of the churchwardens or overseers having been convicted of making any wilful omission, or improper insertion or error, in which case the justice before whom they are convicted must certify the same to the clerk of the peace of the proper county, &c., who is to cause the list to be corrected by giving notice to the sheriff for that purpose :) or, if any sheriff or under-sheriff of a county, or any *sheriff or secondary of London* shall neglect or refuse to prepare a list of "special jurors" as prescribed by the Act, or shall wilfully insert the names of persons not qualified, or omit the names of persons qualified as special jurors, or shall neglect or refuse to write or cause to be written the several numbers contained in such list upon distinct slips of parchment or pieces of card as provided by the Act, or shall

subtract, destroy, or lose, any of the said slips or pieces, or shall not supply such loss within five days after its discovery : or if any sheriff or under-sheriff of a county shall neglect or refuse to prepare or keep for inspection a copy of the *panel* in the cases provided for by this Act, or to register the service of any juror, or to deliver to a juror who has served, &c., a certificate of service, or shall fail to deliver to his successor all the jurors' books and lists, delivered over to him by any of his predecessors : in all such cases, every such clerk of the peace, clerk of petty sessions, sheriff or under-sheriff, sheriff of London or secondary, for *every such offence, shall forfeit the sum of fifty pounds* ; one moiety thereof to the use of her Majesty, and the other moiety, with costs, to such person as shall sue for the same, either by action of debt, bill, information, plaint, &c.

IMPORTANT TO COUNTY VOTERS.

REGISTRATION OF VOTERS IN COUNTIES.—Yesterday and next Sunday, the lists of objections are to be published and exhibited at the church and chapel doors in the respective parishes where the property is situate which gives the qualification ; the lists may be seen at the residences of the overseers at all reasonable hours from the 5th to the 15th instant inclusive. Those persons who find their names objected to, should ascertain if a legal notice has been given—that is to say, a notice given to the occupying tenant personally, or left at the residence of the voter, unless the words “ objected to,” have been placed against the name by the overseer. The revising barrister's court is held some time between the 15th of September and the 25th of October, of which notice is given both by advertisement in the principal newspapers, and by printed notices on the church and chapel doors in all the parishes in the county.
—*The Times*, August 30, 1842.

SECTION IV.

THE SUMMONING OF JURORS.—PENALTIES FOR
NON-ATTENDANCE, &c.

By the 13th section of the new Act, every writ of * *Venire facias Juratores* for the trial of any issue whatsoever, whether civil or criminal, or on any penal statute, in any of the courts in England or Wales before mentioned, shall direct the sheriff to return twelve good and lawful men of the body of his county, qualified according to law; and that every † precept for the return of jurors before courts of “Oyer and Terminer,” Gaol Delivery, the superior criminal courts of the counties palatine, and courts of sessions of the peace in England, and sessions of the peace in Wales, shall in like manner direct the sheriff to return a proper number of good and lawful men of the body of his county, qualified according to law, but shall not require them to be returned from any hundred, or from any particular venue ‡ within the county, and that the want of hundredors shall be no cause of challenge, &c.

* *Venire facias Juratores* is a “judicial writ,” directed to the sheriff, wherein it is commanded that he cause a certain number of jurors to appear to try any issue whatsoever.

† Precept—præceptum (Latin) a command, signifying in this case a written mandate for the return of jurors to try causes in any of the courts in England and Wales.

‡ *Venue*—*vicinetum* (Latin) a contiguous place, *locus quem vicini habitant*, (a place inhabited by neighbours;) signifies the particular place, or county, whence a jury is to be summoned for the trial of issues. In some cases “the venue must be laid in,” as it is termed, that is, the jury must be selected from the particular place where the facts which are the ground of action were committed; barris-

The *venire* is not compulsory, and consequently is of no practical use whatever. A second writ follows, called in the King's Bench a *distringas*, and in the Common Pleas, a *habeas corpora juratorum*, commanding the sheriff to *distrain* upon the lands and chattels of the jurors summoned, unless they appear, or to *have the bodies of the jurors* that they may appear; that is to say, those who have been summoned in the *venire*, but who have not appeared, are excused from appearing until some later day, *nisi prius*, "unless before" that day the justices assigned to hold the assizes shall have come to the place appointed to hold the same, &c.

I may here just observe that the process should be directed to the sheriff, and executed and returned by the same officer. But where the sheriff is either an actual party to the suit, or is so nearly related to the prosecutor or defendant that he cannot be thought impartial, the process must be directed to the coroners, or to such of them as may be deemed free from bias; and if none of them can be regarded as proper, then to two **Elisors* named by the court, against whom, for that reason, no objection can be admitted to prevail.†

If there be two sheriffs for a county, and one of them be partial, the writ must be directed to the other, and not remitted to the coroners, who are employed only

ters and attornies are privileged to lay and keep the venue in *Middlesex*, or to move it into that county, unless another defendant be joined with them. Judges, also, in some actions, are empowered to alter the venue, in a view to a more satisfactory trial—a less partial verdict.

* *Elisors*, or *electors*—persons appointed by the court to select a jury, &c.

† 2 Hawkins, cap. 9, sec. 45.

when there is a total inability in the superior officers, which cannot be the case when there is one impartial sheriff.

So, if the under-sheriff be a party to the suit, the writ may be directed to the high-sheriff, with the proviso that the former shall not interfere in its execution.*

When "process" for the return of jurors is directed to any coroner, elisor, or other officer, such officer has the full power of the sheriff delegated to him; he has access to the jurors' book for the current year, and must return names contained therein, and no others; but if there be no jurors' book for the said year, he may return jurors from the jurors' book for the year before the current year.

After the receipt of every such writ of *venire facias* and *precept*, every sheriff is bound to return the names of men contained in the jurors' book for the current year, and no others, with the same power, however, as the coroner's, to make their return from the book of the year preceding, if there be no jurors' book to be found for the current year.

All sheriffs or other officers, to whom the return of juries for the trial of issues before any court of assize or Nisi Prius in any county of England, except the counties palatine,† may belong, shall, upon their return of every writ of *venire facias* (except in causes to be tried

* Bacon's Abridgment, tit. Juries.

† In a county palatine the record is sent by mittimus to the justices there, commanding them to issue the "jury process," and when the cause is tried, to send the record back again to the court above.

at "bar,"* or in special jury cases) annex a panel† to the said writ, containing the names alphabetically arranged, with the places of abode and additions, of a sufficient number of jurors named in the jurors' book; and the names of the same jurors shall be inserted in the *panel* annexed to every *venire facias*, for the trial of all issues at the same assizes or sessions of Nisi Prius in each respective county; which number of jurors shall not in any county be *less than forty-eight*, nor *more than seventy-two*, unless by the direction of the judges of such assizes or sessions, or one of them, who may direct a greater or lesser number, which number shall then be returned; and in the writ of *habeas corpora*, or *distringas*, it shall not be requisite to insert the names of all the jurors contained in such panel, but it shall be sufficient to insert in the mandatory parts of such writs, "the bodies of the several persons in the panel to this writ annexed named," or words of the like import; the panels containing the same names as those on the panel to the *venire facias*, their places of abode and additions being annexed; and the men named in such panels, and no others, shall be summoned to serve on juries at the next court of assizes or sessions of Nisi Prius, for the respective counties particularized in such writs.

In regard to the return of jurors for the *counties pa-*

* Trials at *bar* are those which take place before the several judges, at the bar of the court in which the action is brought. Such trials are only allowed in causes which require more than ordinary examination and pains-taking.

† *Panel* is the term applied to the schedule or roll containing the names, &c., of the jurors returned by the sheriff. A piece of parchment of an oblong shape is now used for the purpose.

latine, every sheriff or other officer to whom the return of juries for the trial of causes in the superior courts of such counties may belong, are bound, ten days, at least, before the said courts shall be holden, to summon a sufficient number of men, named in the jurors' book, to serve on juries in the said courts; such number not to be less than forty-eight, nor more than seventy-two, without the direction of the judge or judges of the said courts; and such sheriff or other officer shall return a list containing the names, alphabetically arranged, and the places of abode and additions, of the jurors so summoned, on the first day of the court holden for the said counties; and such jurors, or a sufficient number of them, as the judge or judges shall direct, and no others, (except in cases of *special juries*,) shall be named in every panel annexed to every writ of *venire facias*, *habeas corpora*, and *distringas*, issued for trial of causes in such courts of assize, respectively.

The sheriff, or other officer to whom the return of jurors for the trial of causes in any county in *England*, (except the counties palatine) may belong, is to cause to be made out an alphabetical list of the names of all jurors contained in the panels to the several writs of *venire facias*, with their places of abode and additions; and the sheriff or other officer to whom the return of jurors in any county palatine, or in Wales,* may belong, is to cause to be made out a like list of the jurors summoned in such counties; and every such sheriff or other officer must keep such list in the office of his under-sheriff or deputy for seven days, at least, before the sitting of the

* The Courts of Great Session, in Wales, are abolished.

next court of assize or Nisi Prius, or the next court holden for any county palatine, or the next court for any county in Wales :* and the parties in all causes to be tried in any of such courts, and their respective attornies shall, on demand, have full liberty to inspect such list without payment of fee, &c.

After the sheriff or other officer has made up the panel, the summons of every man to serve on juries (special juries excepted) shall be made, ten days at the least before the day on which the juror is to attend, by shewing to the man to be summoned, or in case he be absent from his usual place of abode, by leaving with some person there inhabiting, a note in writing, under the hand of the sheriff, or other proper functionary, containing the subject-matter of such summons. This regulation, however, does not extend to the city of *London*,† or the county of *Middlesex*, concerning which city and county it is specially provided, by the 25th section of the modern "Jury Act," that no longer time shall be required for the summoning of jurors than heretofore by law provided, nor any longer time for the return of any writ of *venire facias*, &c., than heretofore required by law.

As respects the penalties for non-attendance of jurors, if any person having been duly summoned on any

* Chester, formerly the key-stone to North Wales, is the oldest city in England ; according to Sir Thomas Eliot, it was built by a great-grandson of Noah ! The Mayor had formerly the power of respiting executions without previous application to the Crown.

† The intermediate time between the summons and attendance of jurors in *London* and *Middlesex* is six days, and every such juror may, therefore, still be summoned, attached, or distrained, to appear within that time ; and unless prevented by illness, must necessarily attend, &c.

kind of jury in any of the courts in England or Wales shall fail to attend in pursuance of such summons, or being *thrice* called, shall not answer to his name, or if, after having been called, he shall not appear, or after his appearance shall wilfully withdraw himself from the interior or presence of the court, the court may impose such fine upon every such person (unless some sufficient excuse be proved by oath or affidavit) as the court shall decide.

And, the same power is extended to every court of Nisi Prius, Oyer and Terminer, Gaol Delivery, and Sessions of the Peace, holden for the city of London, to fine any person making default when summoned to attend upon any kind of jury in any such courts as before mentioned.

The sheriff, or other officer for the return of juries, is indemnified for returning the name of any person included in the jurors' book, although he may not be qualified or liable to serve; but if he wilfully impanel and return any man to serve on any jury before any of the courts in England or Wales, as aforesaid, (except on the grand jury, or on any assizes,) such person's name not being inserted in the jurors' book for the current year; or, if such book has not been delivered, then in the jurors' book last delivered; or if any clerk of assize, associate, prothonotary, clerk of the peace, or other officer of such courts, shall wilfully record the appearance of any man who *did not really* appear—the court may impose such fine upon every such officer as the court shall decide.

The sheriff, or his under-sheriff, is required to register, from time to time, in alphabetical order, and in

proper columns prepared in the jurors' book for that purpose, the services of such persons as shall be summoned, and shall attend, to serve as jurors on trials before any court of assize or Nisi Prius, Oyer and Terminer, or Gaol Delivery, or in the courts of the counties palatine, and also the times of their services; and every man so summoned, and having duly attended, or served until discharged by the court, shall, upon application before he shall quit the court, receive a certificate, which the sheriff or under-sheriff is bound to give him *on payment of one shilling*, and no more. This provision, however, does not extend either to grand, or special jurors, who must apply for a similar certificate to the *clerk of the peace*, who will grant such certificate on payment of the fee above-mentioned.

And, no sheriff, coroner, elisor, or other officer, may, on any account whatsoever, *excuse* any person from serving on juries, and if any such officer take or receive any fee or other reward, or promise of fee or reward, to excuse any person from serving or being summoned, or under any such pretence; or if any bailiff, &c., summon any person or persons other than those specified in a warrant signed by such sheriff, &c.; or if any such sheriff, &c., shall wilfully transgress in any of such cases, or shall summon any juror (not being a special juror) less than ten days before the day on which he is to attend (except in *London* and *Middlesex*,) the court may impose such a fine on every such offender, as the nature of the offence may warrant, &c.

SECTION V.

DETERMINING THE JURORS.

THE name of each person who shall be empanelled and summoned in any court of assize or Nisi Prius, or for the trial of issues in the civil courts of the counties palatine, with the place of his abode and addition, is to be written on a separate piece of parchment or card, such pieces of parchment or card being all of equal size. These are to be delivered to the associate or prothonotary of the court by the under-sheriff of the county, or the secondary of the city of London; and, under the direction and care of such associate or prothonotary, are to be put together in a box to be provided for that purpose; from which box, when any issue shall be brought on to be tried, such associate or prothonotary shall, in open court, draw out twelve of the said parchments or cards one after another, and if any of the persons whose names shall be so drawn shall not appear, or shall be challenged and set aside, then such further number, until twelve men be drawn, who shall appear, and after all just causes of challenge allowed, shall remain as fair and indifferent: and the twelve men so first drawn and appearing, and approved as indifferent, their names being marked in the panel, and they being sworn, shall be the jury to try the issue; and the names of the men so drawn and sworn shall be kept apart by themselves until such jury shall have given in their verdict, and the same shall have been recorded, or until such jury shall, by consent of the parties, or by

leave of the court, be discharged ; after which, the same names shall be returned to the box, there to be kept with the other names remaining undrawn ; and so on as long as any issue remains to be tried.*

But if any other issue shall be brought on to be tried before the jury, sworn as above, shall have brought in their verdict, or been discharged, the court may order twelve more of those that remain undrawn, to be drawn for the trial of such other issue.†

The court is also empowered, where no objection shall be made on behalf of the Queen or any other party, to try any issue with the same jury that shall previously have tried any other issue, without returning their names to the box to be re-drawn ; or, if both parties agree to withdraw any of the said jurors, or, if any of such jurors be justly challenged, or excused by the court, the names of such jurors may be set aside, and the number may be made up by other names to be drawn from the box, who shall appear, and be approved as indifferent ; and so on as long as any issue remains to be tried.‡

The above mode of determining the jurors for any particular trial, is termed the "Ballot." In *special* jury cases, a different mode of ballot is pursued.

* 6 Geo. iv. cap. 5, s. 26.

† 6 Geo. iv. cap. 5, s. 26.

‡ 6 Geo. iv. cap. 5, s. 26.

MEMORANDUM.

DECEPTION.—All deception in the course of life, is indeed nothing else but a lie reduced to practice, and falsehood passing from words into things.—*South.*

SECTION VI.

THE CHALLENGES, AND TALES,

WHEN the jury shall have been balloted for, either the plaintiff or the defendant is at liberty to *challenge** them, either the whole panel, or any individual of the panel. There are, therefore, two kinds of challenges; namely, first, where the whole jury is excepted to,—which is called the “challenge to the *array*,” by which is meant an objection to the entire jury as it stands arrayed in the panel or parchment on which the names are written; and, second, the “challenge to the *polls*,”—by which are meant the several individual persons or heads in the array.†

Challenges to jurors are also divided into challenge principal or peremptory, and challenge per cause, that is, upon cause or reason alleged. Challenge principal or peremptory is that which the law allows without cause alleged or further examination. Thus a prisoner at the bar arraigned for felony may challenge peremptorily the “number” allowed him by law, one after another, alleging no cause but his *own dislike*; and the jurors so challenged must be removed, and others taken in place of them.

For the “peremptory challenge” which is allowed a prisoner, when on trial for his life, the following reasons are assigned: “As every one must be sensible what sudden impressions and unaccountable prejudices we

* Challenge, (Latin) “*calumnia*,” from the French *challenger*, to object to, &c.

† Coke's Institutes, 156, 8.

are apt to conceive upon the bare looks and gestures of another, and how necessary it is that a prisoner when put to defend his life should have a good opinion of his jury, the want of which might totally disconcert him, the law wills not that he should be tried by any one man against whom he has conceived a prejudice, even without being able to assign a reason for such his dislike. Secondly, because upon challenges for cause shown, if the reason assigned prove insufficient to set aside the juror, perhaps the bare questioning his indifference may sometimes provoke a resentment; to prevent all ill consequences from which, the prisoner is at liberty, if he pleases, peremptorily to set him aside.”*

In civil causes there is another species of challenge, called the challenge *to the favour*, between which and the challenge principal (also most used in civil actions,) the “books” draw the following distinction: the challenge principal is grounded on such a manifest presumption of partiality, that if it be found true and allowed, it unquestionably sets aside either the whole array or the particular juror challenged. Thus where the cause assigned carries with it, *prima facie*, evident marks of suspicion either of malice or favour; as, that a juror is of kin to either party; that he has been arbitrator on either side; that he has an interest in the cause; that there is an action pending between him and the party; that he has taken money for his verdict; that he has formerly been a juror in the same cause; that he is the party’s master, servant, counsellor, steward, or attorney, or of the same society or corporation with him;

* Sir William Blackstone.

all these are *principal* causes of challenge, which, if true, cannot be over-ruled.

Challenges to the favour are when the party hath no principal challenge, but objects only some probable circumstances of suspicion; as acquaintance; interest in the thing demanded; eating and drinking at the charge of either party; affinity of either of the parties to a juror, as that he had married his daughter; and other causes from which favour or prejudice may be suspected. The validity of such challenges, however, must be left to the determination of triers, whose office it is to decide whether the juror be exceptionable or otherwise.*

The mode of appointing triers is this: the triers, in case the first man called be challenged, are two indifferent persons named by the court. If, on trying the man so challenged, (that is, regarding the objections urged against him,) they find him *indifferent*, he is then sworn on the jury; after which, he and the two triers are in like manner to try the next man challenged; and when another juryman shall thus have been found indifferent and has been sworn, the two triers are superseded, and the two men first sworn on the jury become triers of the rest, until a complete jury be thus solemnly sworn, and legally constituted.

If the triers cannot agree, the court may discharge them and appoint others; and when there are three triers who cannot agree, the court cannot take the verdict of two, but must discharge them all.†

The triers, while acting in that capacity, are deemed

* The triers are both sworn "well and truly to try whether G., the juryman challenged, stands *indifferent* between the plaintiff and defendant."

† Vide trials per Pais, 79.

officers of the court, and are liable to be punished for any misdemeanor. *

Challenges to the polls of the jury are reduced by Lord Coke to four heads: namely, *propter honoris respectum* (on account of rank); *propter defectum* (on account of some defect); *propter affectum* (on account of bias, or being affected towards); and *propter delictum* (on account of some crime.)

Touching the first kind, *propter honoris respectum*, as when a lord in parliament is impanelled on a jury, it should seem that he might be challenged by *either* party, or challenge himself. It will appear, however, that all peers are absolutely exempted from serving on any jurors whatsoever, as mentioned in a former chapter.

Propter defectum, on account of defect of birth, liberty, &c.; as if a juryman be an alien born, which is defect of birth; or, if he cannot be said to be *liber et legalis homo*, (a free and lawful man,) which is defect of liberty; or if he be not qualified according to law, which is defect of estate, and now regulated under the statute.† In juries *de medietate linguæ*, neither of these objections can be maintained. See, *ante*.‡

Propter affectum, for suspicion of bias or partiality. This may be made either a *principal* challenge or a challenge *to the favour*, depending on the degree of suspicion evident from the causes of challenge assigned, whether of favour or malice, as before explained in discriminating between challenges principal and to the favour.

* See Bacon's Abridgment. Tit. Juries.

† 6 Geo. iv. c. 50, s. 27.

‡ Which means, refer to former sections of this work.

Propter delictum is a challenge made on the ground of some crime or misdemeanor that affects the juror's credit, and renders him "infamous;" as if he shall have been convicted of treason, felony, perjury, or conspiracy, or any infamous offence; or been attainted of false verdict, &c.

The same reasons which, before the awarding of the *venire facias*, would have been sufficient to have directed that writ to coroners or elisors, instead of the sheriff, will be also sufficient to *quash* the array when it shall have been made by any officer of whose partiality there are any grounds of suspicion.*

There can be no challenge either to the array or the polls before a full jury shall have appeared.†

Neither can challenge to the array be made until issue be joined.‡

It is also laid down as a rule, says Bacon, in his abridgment, that no juror can be challenged without consent *after he has been sworn*, whether in a criminal or civil case, unless for some cause which happened *after he was sworn*.

Where the Queen is party, observes my Lord Coke, any one employed on her behalf may challenge the array,

* 3 Black. Com. 359.

† Bacon's Abridgment.

‡ Booth, 283. Issue and joinder of issue. When the parties in a cause come to a point which is affirmed on one side and denied on the other, they are said to be *at issue*; their differences being at last contracted into a single point which must be determined in favour of either the plaintiff or defendant.

When one party denies the fact pleaded by the other who has tendered the issue thus, "and this he prays may be inquired of by the country," or, "and of this he puts himself upon the country," the party denying the fact may immediately subjoin, "and the said A.B. doth the like." Which done, the issue is said to be *joined*.

in the same manner as in actions between private persons.

Again, after challenge to the polls, there can be no challenge to the array; that is, after the jurors have been challenged *individually*, they cannot be challenged “collectively;” but if the challenge to the array be made first, though such challenge be not allowed, the party is still at liberty to have his challenge to the polls.

By the new statute for the consolidation, &c. of the jury laws. to which I have before referred, the following enactments are made respecting challenges :

First. That want of qualification (in *common jurors*) as prescribed by the Act, shall be good cause of challenge; and any unqualified person returned as a juror *shall be discharged upon such challenge*, if the court be satisfied of the fact; but if any man so returned shall be qualified in other respects according to the Act, the mere want of freehold shall not in any case, civil or criminal, be good cause of challenge, either by the crown or by the party, nor as cause for discharging the person so returned on his own application.

Second. That no challenge shall be taken to any panel of jurors for want of a knight's being returned in such panel, nor any array quashed by reason of any such challenge.

Third. That in all inquests wherein the Queen is a party, notwithstanding it be alleged by those that sue for the Queen, that the jurors are not indifferent, yet such inquests shall notwithstanding be taken; but if they that sue for the Queen challenge any of such jurors, they must assign a cause certain for such challenge,

the truth of which shall be inquired of according to the custom of the court.

Fourth. No person arraigned for murder or felony shall be allowed any peremptory challenge above the number of twenty.

I will now speak of the *tales*. If, by means of challenges, or from any other cause, a sufficient number of unexceptionable jurors *shall not* appear at the trial, either party may, at the assizes or Nisi Prius, by virtue of stat. 35 Hen. VIII. cap. 6, and other subsequent statutes, pray a *tales de circumstantibus*, "such persons from among those who are standing round,"* of such persons present in court as are duly qualified to be joined to the other jurors to try the cause.

By the same statute it is further enacted, concerning this mode of making up a complete jury, that where a full jury shall not appear before any court of assize or Nisi Prius, or before any of the superior civil courts of the counties palatine, or when, after appearance of a full jury, by challenge of any of the parties, the jury is likely to remain untaken for default of jurors, every such court, upon request made for the Queen, by any one thereto authorised or assigned by the court, or on request made by the parties, plaintiff or demandant, defendant or tenant, or their respective attornies, in any action or suit, public or private, shall command the sheriff, or other officer or minister, to whom the making of the returns shall belong, to name and appoint, as often as need be, so many of such other able persons of the county there present, as shall make up a full jury; and such sheriff or other minister shall, at such com-

* 6 Geo. iv. cap. 50, sec. 37.

mand of the court, return such men duly qualified as shall be present, or can be found to serve on such jury, and shall add and annex their names to the former panel; provided, however, that when a "special jury" shall have been struck for the trial of any issue, the talesmen shall be such as shall be impanelled upon the common jury panel to serve at the same court, if a sufficient number of such men can be found; and the Queen, by any one so authorised or assigned as aforesaid, and all and every the parties aforesaid, shall and may, in each of the cases aforesaid, have their respective challenges to the jurors so added and annexed; and the court shall proceed to the trial of every such issue with those jurors who were before impanelled, together with the talesmen so added, as if all the said jurors had been returned upon the writ or precept awarded to try the issue.

A plaintiff or defendant may have a "*tales de circumstantibus*;" and the statutes which authorise justices of Nisi Prius to award a "*tales de circumstantibus*," extend as well to capital cases as to others; but such a tales cannot be prayed for the Queen upon an indictment or criminal information without a warrant from the attorney-general, or an express assignment from the court.*

A tales is not to be granted where the *whole* jury is challenged, &c., but the whole panel, if the challenge be made good, is to be quashed, and a new jury returned; for a tales consists only of such persons as may be met with, to supply the places of such of the jurors

* 2 Hawkins's Pleas of the Crown, cap. 41, sec. 18.

as are wanting of the number of twelve, and is not to make a *fresh jury*.*

In civil cases it is an allowed rule, that the tales must be for a less number than the original process; but in capital cases it may be granted for a larger number, according to the direction of the court, in order to prevent the delay which might be occasioned by the defendant's exercising his power of making peremptory challenges.†

But, should any subsequent *tales* be necessary in capital or other cases, the same must be for a less number than the former, except the former be quashed, in which case the next may be for the same number.

A tales may be prayed, as in civil actions, in cases of misdemeanor tried by writ of Nisi Prius.‡

If the issue be to be tried by two counties, and one full inquest appear of one county, but an insufficient number of jurors of the other county, a *tales* may be awarded to the county where the default is, and not to the other.||

If neither of the parties request a *tales*, the cause must go off for want of jurors.§

When talesmen are added, to complete juries, they are sworn in the same manner as the jurors with whom they are to act.

Since the practice was introduced by stat. 3, Geo. II. cap. 25, confirmed by the new Jury Act, of empanelling not less than forty-eight, nor more than seventy-two men, for the trial of all common causes, the provi-

* Lilly's Abridg. 252.

† 3 State Trials, 57.

§ 1 Strange, 707, 709.

‡ See Hawkins.

|| Trials per Pais, 81.

sions of the statutes respecting a *tales* have been confined in a great measure to special juries.

In default of special jurymen, should a *tales* be then prayed, it is supplied according to stat. 7 and 8 of William III. cap. 32, from the panel of common jurymen, as specially directed in 6th Geo. IV. cap. 50, s. 37.

No *tales* can be prayed if there be not two or more special jurymen then present.

IMPORTANT NOTICE.

ASSESSED TAXES.—All persons who are desirous of determining their contracts of composition for Assessed Taxes on the 5th April, 1843, must, on or before the 10th day of October, 1842, give notice in writing of their desire to the assessor or collector of the parish, or to the surveyor of the district in which such composition shall be payable; otherwise, by an Act, 5 and 6 Victoria, cap. 37, all contracts are declared to be continued, with the full benefits thereof, for the further term of one year, to the 5th of April, 1844; and all persons who may have any increase in the articles included in their contracts, which they intend to discontinue, must give notice in writing to the assessor or collector of the parish in which they reside, or to the surveyor of the district, on or before the 10th day of October, 1842, that it is their intention to discontinue the use of such articles on or before the 5th of March, 1843; and they must actually cease to keep the same on or before the said 5th of March, 1843, otherwise they will be chargeable for the same.

SECTION VII.

CONCERNING "VIEWS."

AND, where in any case, either civil or criminal, or on any penal statute, depending in any of the courts of record at Westminster, or in the counties palatine, it shall appear to any of the respective courts, or to any judge thereof in vacation, that it will be proper and necessary that some of the jurors who are to try the issues in such case, should have *view of the place* in question, in order to their better understanding the evidence given upon the trial, in every such case, such court, or judge in vacation, may order a rule to be drawn up, containing the usual terms, and also requiring, if the court or judge shall think fit, the party applying for the view to deposit in the hands of the under-sheriff a sum of money, to be named in the rule, for payment of the expenses of the view, and commanding special writs of *venire facias*, *distringas*, or *habeas corpora*, to issue, by which the sheriff or other minister to whom the said writ shall be directed, shall be commanded to have six or more of the jurors named in such writs, or in the panels affixed thereto, (who shall be alike approved by the parties concerned; or, if they cannot agree, the same shall be chosen by the sheriff or such other minister as aforesaid,) at the place in question, some seasonable time before the trial, who then and there shall have the place in question shown to them by *two* persons in the said writs named, to be appointed by the court or judge; and such sheriff or

other minister who is to execute such writ, shall, by a special return upon the same, certify that the view hath been had according to command, mentioning the names of the viewers.*

Where a view shall be so allowed, those men who have had the view, or such of them as shall appear upon the jury to try the issue, shall be first sworn, and so many only shall be added to the viewers who shall so appear, as shall, after all defaulters and challenges, make up a sufficient jury of twelve.†

In any case wherein an order for a view shall have been obtained, the judge before whom such case is to be tried, is authorised and required, on the application of the party obtaining such order, to appoint such case to be tried during the attendance and service of the said batch of jurors (should there be two sets) in which the viewers, or the majority of them, are included.

When any viewer, having been duly summoned, &c. shall make default, either by not attending, in pursuance of such summons, by not answering to his name after being called three several times, or by wilfully withdrawing himself, after his appearance, from the presence of the court, (unless he supply some reasonable excuse, proved by oath or affidavit,) the court is authorised and required to set upon such viewer a fine of *ten pounds*, or as much more as the court, under the circumstances, shall think right and expedient.

According to the 22d section of the *late* Act, as before quoted, it would appear to be discretionary in the court to grant a view, if satisfied that it is lawful and

* 6 Geo. iv. cap. 50, sec. 23.

† Ditto, sec. 24.

necessary ; but in actions of waste and "*quare clausum fregit*," * the necessity for a view appearing on the face of the pleadings, the motion for it is a motion of course, requiring only counsel's signature ; upon which, a rule of court is drawn up *in term time*, or a judge's order in vacation. In other cases, a special application must be made for the rule or order to the court or a judge, upon an affidavit of the circumstances ; and it is always made a point of the rule or order, that the expenses of taking the view shall be equally borne by both parties, and that no evidence shall be given on either side at the time of taking the same. Before the rule or order is drawn up, an application should be made to the opposite attorney, for the name of his agent, or person who is to show the land ; and the names of both "showers" should be inserted in the rule or order, and also in the writ, with the time and place of meeting for taking the view. The rule or order being drawn up, a copy of it must be served on the opposite attorney, and the original left with the sheriff, together with the names of the jurors, *if special*, and he will summon them ; if common, he will summon such as he thinks proper.†

* Which means—"Wherefore he broke the close," &c.

† See to Impey's Practice for a further confirmation of this mode of procedure.

MEMORANDUM.

The first fault man commits is to take theories for experience ; the second, to consider his own experience as that of all.—*Menzel*.

SECTION VIII.

DUTIES OF JURORS—THE VERDICT, &c.

So, when a complete jury has been made up, in the manner already described, the jurors are then sworn separately in the following form: "You shall well and truly try the issue joined BETWEEN the parties, and a true verdict give, ACCORDING to the evidence—so help YOU GOD;" * or if in *criminal* prosecutions, the following—"You shall well AND truly try, and TRUE DELIVERANCE make, between our sovereign lady the Queen and the prisoner at the bar, whom you shall have in charge, and a true verdict give, according to the evidence—so help you God." †

Unless the jury can agree immediately as to their verdict, after hearing the evidence given upon the issue, they are by the law of England, to withdraw from the court, and be kept together in some desirable adjoining place, without meat or drink, fire or candle, and without intercourse with any person, whether interested in their decision or not. ‡

A proper officer of the court ought to be sworn to keep them together, and not to suffer any indifferent person to speak with them, or either of them. ||

If the jury, after the evidence given to them at the bar, eat or drink at their own expense, either before or after they have agreed on their verdict, they are at

* This form of oath is designated "*juramentum triationis*."

† While this form is distinguished from the first as "*juramentum pergationis*," &c. ‡ 1 Institutes, 227. || 2 Hale, 296.

least finable for so doing, but the verdict is not therefore void ; but if, before they have agreed on their verdict, they eat or drink at the charge of the plaintiff, and their verdict be given in his favour, such verdict will be void ; but if in such case it be given for the defendant, it will not therefore be void ; and so on the contrary.

And if, *after* they shall have agreed on their verdict, they eat or drink at the expense of him in whose favour such verdict is to be given, the verdict will still be good in law.

All jurors are to be fined for taking any kind of eatable with them from the bar, even though they do not use it ; but the verdict will be good notwithstanding.

With the assent of the justices, however, they may both eat and drink. Thus, if either of the jurors fall sick before they have agreed on their verdict, then, with the consent of the justices, he may have meat or drink, and all other things necessary for him, and his fellows likewise, at their own cost, or at the joint cost of the parties in the suit, *if they so agree* ; and if such parties cannot agree, the justices may permit the jury to have both meat and drink for a little, in a view to see whether they will concur or not.

Where the trial is protracted, indeed, the court usually grants permission to the jurors to eat and drink during the trial, at their individual expense, or at the equal expense of both parties. In several of the trials for treason, the jurors were usually permitted to eat and drink, and retire to rest, attended by the proper officer of the court. This irregularity was deemed justifiable by the necessity of the case ;—Lord Chief Jus-

tice Denman, Lord Chief Justice Tyndal, and Lord Abinger, concurring in such expedience.

Upon the trial of a misdemeanor, where the jury separated at night without the consent of the defendant, a new trial was refused, on the ground that there was no suspicion of collusion or improper communication.*

If, after hearing the evidence on a "capital charge," one or more of the jurors becomes suddenly incapable, through illness, of proceeding to "verdict," the court may discharge the jury, charge a new jury with the prisoner, and convict him thereby.

When the jury shall have left the bar, no fresh evidence can be adduced before them, nor can they recall a witness, and make him repeat his evidence, unless it be in *open court*.†

If the plaintiff, after evidence given, and the jury shall have quitted the bench and the bar, or any one or more persons on his behalf, deliver any letter or letters, from him to any of the jury concerning the matter at issue, which was not given in evidence, it will render the verdict invalid if found for such plaintiff, but not if found for the defendant.

It should be borne in mind that the jury are not permitted to carry with them any writing which was not given in evidence in open court. It seems doubtful, however, how far such conduct will *avoid the verdict*, there being decisions for and against, given according to circumstances; but a juror may give any evidence with which he is individually acquainted, either openly

* Barnewall and Alderson's Reports, vol. ii. 462.

† Pleas of the Crown, 296.

in court, or privately to the jury after they have retired. It is usual, however, for jurymen in such cases to apprise the court before they are sworn, that they have evidence to give.

In all cases the jury must be unanimous upon their verdict: but if they cast lots, or throw at some game for it, the court will set it aside.* In the case quoted below the jury having sat up all night, agreed in the morning to put "two papers" into a hat, marked *plaintiff* and *defendant*, and in this manner draw lots. Plaintiff came out first, and they therefore found for him! This happened to be according to the evidence, and the opinion of the judge, but on motion for a new trial it was granted.

But in such cases, it appears that the affidavit of the jurymen themselves will not be admitted as evidence, such conduct being *a very high misdemeanor in them all*: the court must derive their knowledge from some other source, such as from some person having seen the transaction through a window, and so on. Thus, where the jurors being divided equally in opinion, agreed to put two half-crowns into a hat, and that the verdict should be given according to that half-crown which the officer drew out, (which was for the plaintiff, with two-pence damages,) the court refused a new trial, because the facts were learned by worming them out of a jurymen, who confessed all.†

It is true that a verdict may nevertheless be determined by a "majority" of votes, it being only essentially necessary that the jury should agree upon their

* Hale v. Cove, Sir J. Strange, p. 642.

† See Prior v. Powers, and other similar cases.

verdict, and it being presumable that the votes would be given according to their acquiescence.

In all cases the verdict is given into the court by the foreman of the jury. If the foreman deliver a wrong verdict, it may be set aside.

In causes between party and party, if the court be risen, the jury may give a *private* verdict before any of the judges of the court, after which they may eat and drink; and the next morning, in open court, they may either affirm or alter their private verdict, and that which is given in court shall stand.

But in "criminal cases" of life or member, the verdict must always be given in open court.*

In all causes, and in all actions, the jury may give either a general or a special verdict as well in civil as in criminal cases. A general verdict finds generally and wholly for one party. A special verdict is where the jury are agreed on the fact, (which they find true specially,) but reserve some point of law, of which they are doubtful, to be determined by the discretion of the learned judge who may preside.

The minutes of a special verdict should be approved by the court, it being the peculiar province of the judge to take care that the question of law is *fairly stated*. They should likewise be signed by one of the counsel for each party, and delivered to the jury before they find their verdict.

Jurors are to try the "fact," and the judges are to judge according to the law that ariseth upon the fact; but if jurors will take upon themselves the knowledge of the law, as well as a decision of the fact, it seems

* 1 Inst, 227.

that they are at liberty to do so. It is usual, however, as well as safer, for the jury to find according to the *direction* of the learned judge in matter of law.

By stat. 32 Geo. III. c. 60, s. 1, after reciting that doubts had arisen, whether, on the trial of an indictment or information for the making or publishing any "LIBEL," it was competent to the jury to give their verdict on the whole matter in issue, it is declared that on every such trial, the jury may give a *general* verdict of guilty or not guilty upon the whole matter in issue, and shall not be required or directed by the court or judge to find the defendant guilty, merely on the proof of the publication by such defendant of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information.

The second section enacts that, in every such trial, the court or judge shall, at their discretion, give their opinion and directions to the jury, in like manner as in other criminal cases.

Section 3. That nothing shall extend to prevent the jury from finding a "special verdict," as in ordinary cases.

If the jury acquit a prisoner of an indictment of felony against manifest evidence, the court may, *before* the verdict is recorded, but not after, order them to go out again and re-consider the matter; but this, by many, is thought hard, and seems not, of late years, to have been so frequently practised as before. However, it is settled that the "court" cannot set aside a verdict which *acquits* a defendant of a prosecution properly criminal, (as it would appear they may a verdict that *convicts* him,) for having been given *contrary to evidence and*

*the directions of the judge, or any verdict whatsoever, for a mis-trial. &c.**

So, after the verdict has been once recorded, the jury cannot alter it; but before it is recorded, they may vary from their first verdict, and the verdict which is afterwards recorded (if there be a second verdict,) shall stand good.†

And, if the jury cannot agree,—as if one of the jurors knoweth in his own conscience the thing to be false, which the others affirm to be true, and so he will not agree with them in giving a verdict, the court may, in such case, make such order as shall in conscience and reason be deemed fit, by awarding a new jury, or otherwise, in the same manner as though one or more of the jury had died before verdict given.

Jurors, in all civil causes, are to be *paid* for their attendance; the amount to be proportioned to the distance of the place of trial from their houses, the state of the weather, &c.‡

By 24 Geo. II. c. 18, s. 2, no juryman may take more than the sum of money which the learned judge who tries the issue may think just and reasonable, *not exceeding one pound one shilling*, except in cases where a “view” shall be directed.

If the jury find a “special verdict,” the charges of the jury are borne equally by both parties.§

* 2 Hawkins, c. 47—a. 11, 12.

† 1 Ins. 227.

‡ Bacon's Abridgment, and others.

§ 2 Leonard's Reports, 174.

SECTION IX.

ADDITIONAL PROVISIONS OF THE LATE JURY ACT.

(6 Geo. iv. cap. 50. &c.)

ISSUE OF NEW WRITS OF VENIRE.—If any plaintiff or demandant in any cause at issue in any of her Majesty's courts of record at Westminster, or any defendant in any action of *quare impedit*,* or *replevin*,† which shall be so at issue, shall sue out any writ of "*venire facias*," upon which any writ of *habeas corpora* or *distringas* shall issue, in order to trial at the next ensuing assizes or sessions of Nisi Prius, and shall not proceed to trial at the first assizes or sessions after the date (teste) of such writ of *habeas corpora* or *distringas*; in every such case, (except when a view shall be directed,) such plaintiff, demandant, or defendant, whenever he shall think fit to try such issue at any other assizes or sessions of Nisi Prius, shall sue forth a *fresh writ* of *venire facias*, commanding the sheriff to return anew "twelve good and lawful men" of the body of his county, qualified according to law, the rest of the writ proceeding in the usual manner; which writ being *duly returned*, a writ of *ha*-

* *Quare impedit*, (Latin,) "*wherefore he hinders*," is a writ or action which the purchaser of an advowson may have against a person who *hinders* or disturbs him in his right of advowson, by presenting a clerk (clergyman) when the church is void.

† *Replevin*, *replegiare*, (Latin) thus:—*re*, back again, and *plevina*, a pledge; (a taking back of the pledge) is a remedy or action granted in cases of distress for rent. The person availing himself of this remedy must give security to the sheriff, that, on the goods distrained being delivered up to him, he will prosecute the action against the distraining party.

beas corpora or *distringas* shall issue, upon which such plaintiff, demandant, or defendant, may proceed to trial, as if no former *venire facias* had been prosecuted; and if any defendant, or tenant, in any action depending in any of the said courts, shall be disposed to bring to trial any issue joined against him, where, by the practice of the court, he may do the same by *proviso*,* he may in the term next preceding such intended trial, sue out a *fresh venire facias* to the sheriff by *proviso*, and prosecute the same as effectually as if no former writ of *venire facias* had been sued out or returned in the same cause.

INDICTMENTS FOR HIGH TREASON, &c.—When any person is indicted for high treason, or misprision of treason, in any court, except the court of Queen's Bench, a list of the "petty jury," with the names, professions, and places of abode of the *jurors*, shall be given at the same time that the copy of the indictment is delivered to the party indicted, which shall be ten days before the arraignment, and in the presence of two or more credible witnesses; and when any person is indicted for high treason, or misprision of treason in the court of Queen's Bench, a copy of the indictment shall be delivered within the time and in manner aforesaid; but the list of the "petty jury," made out as aforesaid, may be delivered to the party indicted at

* The trial by "proviso" is where the plaintiff in an action desists in prosecuting his suit, and doth not bring it to trial in proper time. The defendant in such case may take out a *venire facias* to the sheriff, which hath in it these words, "*proviso quod*," &c., that is, *provided that*, if plaintiff take out any writ to that purpose, the sheriff shall summon but *one jury upon them both*; and this is called going to trial by *proviso*. It has been seldom resorted to of late.

any time after the arraignment, so as it be delivered *ten days before the day of trial*; provided always, that nothing herein contained shall extend to any indictment for high treason in compassing and imagining the death of the King, or for misprision of such treason, where the overt act or acts alleged in the indictment shall be "assassination," or killing of the King, or any direct attempt against his life or person,* whereby his life may be endangered or his person suffer bodily harm; or to any indictment for high treason for counterfeiting his Majesty's coin, the great seal, or privy seal, his sign manual, or privy signet; or to any indictment of high treason, or proceedings thereupon, against any offenders, who, by any Act or Acts now in force, are to be indicted, tried, &c. with similar evidence, and in the manner used and allowed against offenders for counterfeiting his Majesty's coin of the realm.

TWO SETS OF JURORS.—*Touching Judges' Powers.* In any county in which the judges of assize in England, or the justices of the superior courts of the counties palatine, shall think fit so to direct, the sheriff or other minister to whom the return of the "*venire facias*," or other process for the trial of causes at nisi prius, belongs shall summon and impanel such number of jurors, not exceeding one hundred and forty-four, as such judges or justices shall think fit to direct, to serve indiscriminately on the criminal and civil sides; and when such judges or justices shall so direct, the sheriff or other minister shall divide such jurors equally into two sets, the first of which sets shall attend and serve for so

* Refer to articles on the "Law of Treason" and the "Punishment of Death" contained in the latter part of this work.

many days at the beginning of each assize, as such judges shall, within a reasonable time before the commencement thereof, think fit to direct; and the other of which sets shall attend and serve for the residue of such assize. And such sheriff or other minister shall, in the summons to the jurors in each of such sets, specify whether the juror named therein is in the first or second set, and at what time his attendance will be required; and such sheriff or other minister shall, upon his return of every such writ or process, annex thereto a panel containing the names, alphabetically arranged, with the additions and places of abode of the jurors in each of such sets; and during the attendance and service of the first of such sets, the jury on the civil side shall be drawn from the names of the persons in that set, and during the attendance and service of the second of such sets, from the names of the persons in such second set.*

JURORS MAY BE FINED FOR NON-ATTENDANCE BY SHERIFFS AND CORONERS.—If any person, having been duly summoned and returned to serve as a juror in any county in England or Wales, or in London, upon any inquest or inquiry before any sheriff or coroner, or before any commissioners appointed under the great seal, or the seals of the court of exchequer, the courts of the counties palatine, shall not, after being openly called three times, appear and serve as a juror, every such sheriff, or, in his absence, the under-sheriff or secondary, and such coroner and commissioners respectively, are authorised and required (unless some reasonable excuse be proved on oath or affidavit) to

* See Section 22, said Act.

impose such fine upon every such defaulter as they shall think fit, not exceeding five pounds; and every such sheriff, coroner, &c. shall make out and sign a certificate, containing the Christian and surname, residence, and trade or calling, of every such defaulter, together with the amount of the fine imposed, and the cause thereof, and shall transmit such certificate to the clerk of the peace for the county, riding, or division, in which every such defaulter shall reside, on or before the first day of the next ensuing quarter sessions; and every such clerk of the peace is required to copy the fines so certified on the roll on which all fines and forfeitures imposed at such quarter sessions shall be copied; and the same shall be levied as if they were part of the fines imposed at such quarter sessions.*

JURORS MAY BE FINED FOR NON-ATTENDANCE IN INFERIOR COURTS.—Each juror duly summoned and returned to serve upon any jury for the trial of any cause or criminal prosecution, to be tried in any court of record within the city of London, other than the superior courts mentioned in the Act, or in any other liberty, franchise, city, borough, a town, who shall not appear and serve on such jury, (after having been openly called three times, and proof having been made on oath of such defaulter having been duly summoned,) shall forfeit, for every such default, such fine, not exceeding forty shillings, nor less than twenty shillings, as the presiding judge shall deem reasonable to impose, unless some just cause for absence be proved by oath or affi-

* See section 53 of the Act; but, in order to ascertain the peculiar construction of the section, refer to the former part of this work.

davit to the satisfaction of the court; and if any person so fined shall refuse to pay such fine to the person authorised by the court to receive it, such court may, by its order, signed by the proper officer thereof, cause such fine to be levied by distress and sale of the goods and chattels of such defaulter, the overplus money which shall remain after payment of such fine, and the charges of such distress and sale, being rendered to the person whose goods have been so distrained and sold. And the fines so imposed, when received or levied, shall be paid to the proper officer of the liberty, &c. in which the court was holden, to be applied in the same manner as other fines imposed in courts within the same liberty,* &c.

FINES MAY BE IMPOSED BY THE SUPERIOR COURTS.—All fines imposed under the Act, by any of the "courts of record" at Westminster, or any of the superior courts, civil or criminal, of the counties palatine, or by any court of assize, Nisi Prius, Oyer and Terminer, or Gaol Delivery, or by any court of session in England or Wales, shall be levied and applied in the same manner as any other fines imposed by the same courts; and all other penalties created by the Act (for which no other remedy is given) shall, on conviction of the offender before any one justice of the peace within his jurisdiction, be levied, unless forthwith paid, by distress and sale of the offender's goods and chattels, by warrant, under the hand and seal of such justice, who is authorised to hear and examine witnesses, on oath or affirmation, on any complaint, and to determine the same, and mitigate the penalty if he think fit, to the extent of

* See sections 55, 56, and 58.

one moiety thereof; and all penalties, the application of which is not particularly directed by the Act, shall be paid to the complainant; and for want of sufficient distress the offender shall be committed, by the warrant of such justice, to the common gaol or house of correction, for such term, not exceeding six calendar months, as such justice shall think proper, unless the penalty be sooner paid.*

SUITS AGAINST PERSONS FOR THINGS DONE IN PURSUANCE OF ACT.—If any suit or action be prosecuted against any person for any thing done in pursuance of this Act, such person may plead the “general issue,” and *give the Act and the special matter in evidence*; and if a verdict pass for the defendant, or the plaintiff become non-suit, or discontinue the action after issue joined, or if, upon demurrer or otherwise, judgment be given against the plaintiff, the defendant shall recover *double costs*, and have the like remedy for the same as any other defendant; and, though a verdict be given for the plaintiff in such action, he shall not have costs against the defendant, unless the judge before whom the trial shall have been holden certify his approbation of the action and verdict.†

LIMITATION OF SUITS, AND VENUE.—All actions, &c. commenced against any person for any thing done in pursuance of this Act, must be laid and tried in the county where the fact was committed, and be commenced *within* six calendar months after, and not otherwise; written notice to be given to defendant one

* See section 55.

† For the form of conviction before a justice, as prescribed by 56th section, See page 134 of this work.

calendar month at least before the commencement of the action.

ATTAINTS.—Section 60 of the new Act, utterly abolishes all “attaints,”* or inquests to inquire concerning the validity of other inquests.

EMBRACERY.—Section 61 enacts, that, notwithstanding any thing in this Act contained, every person who shall be guilty of the offence of embracery,† and every juror who shall wilfully or corruptly consent thereto, shall and may be proceeded against by indictment or information, and be punished by fine and imprisonment, in like manner as every such person and juror might have been before the passing of said Act.

Neither the party himself, his counsel, attorney, nor any other person, can justify any under-current practices, with a view to influence a jury, whether by giving them money or promising them entertainment, &c. menacing them, or instructing them in the cause previously to the trial.‡

It is an offence to give money to a juror *after* the verdict, unless it be openly and fairly given to all alike, in consideration of the expenses of their journey, and trouble of their attendance.

* It will be only necessary to observe, that “*attaint*” was a process commenced against a former jury for bringing in a false verdict, that so the judgment following thereupon might be either confirmed or reversed, as the case might be.

† *Embracery* is an attempt to “prejudice” a jury corruptly to one side by promises, *et cetera*. The punishment for the embracer, or person so offending, &c. is by fine and imprisonment; and for the juror so embraced, if it be by taking money, the punishment is, (by various statutes from Edward III. to Elizabeth) perpetual infamy, imprisonment for a year, and forfeiture of tenfold value.

4. Blackstone's Commentaries, 140.

‡ 1. Hawkins's Pleas of the Crown, c. 85.

It is embracery for a person by underhand means to procure himself or another to be sworn of a *tales*, in order to serve one side.

It is criminal in a juror to endeavour to prevail with his brother jurors to give a verdict for one side, by any practices whatsoever, except only by exhortations from the general obligations of conscience to give a true verdict.*

* Hawkins, and others.

MEMORANDUM.

It may startle our readers to be told, what we now state from an official document presented to Parliament last Session, that a greater sum is paid in salaries and emoluments to the Poor-law officers than is expended in the actual maintenance of our poor! We distinctly repeat it, a far larger amount is annually disbursed among the officers who administer this law, than is appropriated to feed, clothe, and harbour the unhappy beings who obtain *in-door* relief! In other words, more than half of the money assessed upon the public under the pretext of affording succour and homes to the many hundreds of thousands of paupers of the kingdom, goes to pay the precious set of scoundrels who are employed to distribute the public alms! We do not include in this view of the subject (for it is made a distinct item in the vouchers we refer to) the expenditure upon *out-door* relief. Yes, of every pound we severally pay, more than eleven shillings go into the pockets of, perhaps, taking them as a body, the most unmanly and unfeeling creatures of the earth.—*Age*. [This averment seems to want confirmation.

Ed.

SECTION X.

CONCERNING SPECIAL JURIES.

WITH respect to special juries, it is enacted by the 30th section of the statute lately passed, that it shall be lawful for her Majesty's courts of Queen's Bench, Common Pleas, and Exchequer, at Westminster, respectively, and for the judges of the courts of the counties palatine, upon motion made on behalf of the Queen, or upon the motion of any prosecutor, relator,* plaintiff, or demandant, or of any defendant or tenant, in any case whatsoever, whether civil or criminal, or on any penal statute, excepting only indictments for treason or felony, depending in any of the said courts, to order and appoint a "special jury" to be struck before the proper officer of each respective court, for the trial of any issue joined in any of the said courts, and triable by a jury, in such manner as the said courts respectively have usually ordered the same, &c.

The next following section prescribes the qualifications necessary for special jurors in English and Welch counties, and in London, as follows:—

Every person who shall be described in the jurors' book for any county in *England* or *Wales*, or for the county of the city of London, as an esquire, or of still higher degree, or as a banker or merchant, shall be qualified and liable to serve on "special juries" in every such county in England and Wales, and in London, re-

* I may here mention that *Relator*, is from the Latin,—a rehearser, or teller; applied, for the most part, to an informer.

spectively ; and the sheriff of every county in England and Wales, or his under-sheriff, and the sheriffs of London, or their secondary, shall, within ten days after the delivery of the jurors' book for the current year to either of them, take from such book the names of all persons who shall be described therein as esquires, or men of higher degree, or as bankers or merchants, and shall cause such names to be fairly copied out in alphabetical order, with their places of abode and additions, in a separate book to be subjoined to the jurors' book, which list shall be called the "special jurors' list;" and shall prefix to every name in such list its proper number, beginning the numbers from the first name, and continuing them in regular arithmetical series down to the last name ; and shall cause the said several numbers to be written upon *distinct* pieces of parchment, being of equal size ; and after all the said numbers shall have been so written, shall put the same together in a separate drawer or box, and shall there safely keep the same to be used for the purpose after-mentioned.

And, whenever any of the courts or judges above mentioned shall order a "special jury" to be struck before the proper officer, such officer shall appoint a time and place for the nomination of such special jury ; and a copy of the rule of court and of such officer's appointment, shall be served on the under-sheriff of the county in England or Wales, in which the trial is to be had ; or on the secondary of the city of London, if the trial is to be had there, and also on all the parties who have usually been served with the same respectively in the accustomed manner ; and the said of-

ficer, at the time and place appointed, being attended by such under-sheriff or secondary, or his agent, who are required to bring with them the jurors' book, and such special jurors' list, and all the numbers so written on distinct pieces of parchment or card as aforesaid, shall, in the presence of all the parties in the cases, and of their attornies, (if such parties or attornies, all or any of them, choose to attend, or if not, then in their absence,) put all the said numbers into a box, to be provided for that purpose, and after having shaken them together, shall draw out of the box *forty-eight* of the said numbers, one after another, and shall, as each number is drawn, refer to the corresponding number in the special jurors' list, and read aloud the name designated by such number; and if at the time of so reading any name, either party, or his attorney, shall object that the person whose name shall have been so referred to, is in any manner incapacitated from serving on the said jury, and shall then and there prove the same to the satisfaction of the said officer, such name shall be set aside, and such officer, instead thereof, shall draw out of the box another number, and shall in like manner refer to the corresponding number in the said list, and read aloud the name designated thereby, which name may be in like manner set aside, and other numbers and names shall in every such case be resorted to, according to the mode before described for the purpose of supplying names in the places of those set aside, until the whole number of forty-eight names not liable to be set aside shall be so drawn out and designated.*

* 6 Geo. iv., cap. 50, s. 32.

If in any case it shall happen that the whole number of forty-eight names cannot be obtained from the special jurors' list, in such case the said officer shall fairly and indifferently take, according to the mode of nomination heretofore pursued in nominating "special juries," such a number of names from the *general* jurors' book, in addition to those already taken from the special jurors' list, as shall be required to make up the full number of forty-eight names, all of which shall be deemed special jurors.*

And the said officer shall afterwards make out for each party a list of the forty-eight names, with their places of abode and additions, and after having made out such list, shall return all the numbers so drawn out, together with those remaining undrawn, to the under-sheriff or secondary, or his agent, to be kept for future use.†

And all the subsequent proceedings for reducing the said list, and all other matters whatsoever relating to "special juries," shall continue in force as heretofore, except when expressly altered by the Act; and all the *fees* heretofore payable on the striking of special juries, *shall continue to be paid in the accustomed manner.*‡

Notwithstanding the above enactments, it is provided by the 33d section, that nothing shall prevent the parties in any cause, or their attornies, from consenting to have a "special jury" nominated according to the mode used before the passing of the Act, and that upon a consent to that effect signed by each party

* 6 Geo. iv. cap. 50, s. 32.

† See the new Act, cap., and section.

‡ *Vide* the same.

or his attorney, being communicated to the proper officer, he may nominate a special jury for the trial of every such cause, according to the mode used before the passing of the Act.

The old method of striking "special juries," which may be still resorted to by consent as above mentioned, is as follows: when EITHER of the parties wishes to have a special jury struck, he gives a brief to counsel for that purpose, which is then carried to the clerk of the rules, who draws up the rule. When the rule is drawn up, an appointment is had at the Master's, in the Queen's Bench, or the Prothonotary's, in the Common Pleas, and a copy of the rule and appointment served on the attorney of the opposite party, and on the deputy-secondary, if in London, or sheriff, if in Middlesex or any other county; the deputy-secondary or sheriff accordingly attends the Master or Prothonotary with the jurors' book, and the Master, in the presence of both parties, names forty-eight out of the above book. When the list of forty-eight is made out, an appointment is had from the Master, on which the attornies on both sides attend the Master and strike out twelve on each side; the remaining twenty-four are returned to try the issue, and a special distringas issues for that purpose. If the attorney for either party does not attend, the Master will strike out twelve names for him that is absent.*

The same special jury may, by consent in writing of the parties to causes or their attornies, try any number of causes.†

Upon the application of any person who shall have

* Tidd's Practice.

† 6 Geo. iv., cap. 50. sec. 33.

served upon one or more "special juries," at any assizes or sessions of Nisi Prius, the court, if it think fit, may discharge such man from serving upon any other special jury during the same assizes or sessions.

Where any special jury shall be ordered by any rule of court to be struck by the proper officer of such court, in any cause arising in any county of a city or a town,* except the city of London, the sheriff or sheriffs thereof, or the under-sheriff respectively, shall be commanded by such rule to bring, or cause to be brought, before the proper officer of the court, the books, or lists of persons qualified to serve on juries within such county of a city or a town; and in every such case, the jury shall be taken and struck out of such books or lists in the manner heretofore used and accustomed. And this, in the 33d section.

The person or party who shall apply for a "special jury" must pay the fees for striking such jury, and all the expenses of the trial by the same, and will not have any further allowance upon taxation of costs than he would have been entitled to if the cause had been tried

* The stat. 3 Geo., i. cap. 15, for the regulation of the office of sheriff, enumerates twelve cities and five towns, which, being counties of themselves, are termed "counties of cities or towns," and have, consequently, their own sheriffs. The cities (London excepted,) are :

1—Chester.	5—Exeter.	9—Norwich.
2—Bristol.	6—Gloucester.	10—Worcester.
3—Coventry.	7—Litchfield.	11—York.
4—Canterbury.	8—Lincoln.	

The Towns are :

1—Hull.	3—Newcastle-upon-Tyne.	5—Southampton.
2—Nottingham.	4—Poole.	6—Cirencester.

[Upon what authority Cirencester has been added, in Impey's Sheriff, does not satisfactorily appear; no mention being made of any. Ed.]

by a common jury, unless the judge, before whom the cause is tried, shall, immediately after the verdict, "certify," under his hand, upon the back of the record, that *the cause was a proper one to be tried by a special jury*; that is to say, it was such a cause as *required* a special jury. And this is provided by the 34th section of the Act.

About the allowances to "special jurors," it is enacted by the 35th section, that no such juror shall be allowed to take, for serving on any such jury, more than *such sum as the judge who tries the issue shall think just and reasonable*, and which shall not exceed the sum of one pound one shilling, except in cases wherein a "view" is directed, and shall have been had by such juror.

In section vii. of this work will be found some observations on that topic—namely, Views, Viewers, &c.

MEMORANDA.

PARTY SPIRIT.—Those who are actuated by a spirit of party themselves, are sure to attribute similar feelings to others; they cannot imagine that a man can be zealous and in earnest, without feeling an antipathy to those who differ from him. * * *

The Church of Christ has no deadlier enemies than those who seek to divide it into parties, and who are always looking out for points of difference rather than those of agreement.—*Dr. Burton.*

The surest way to prevent seditions (if the times do bear it) is to take away the matter of them; for if there be fuel prepared, it is hard to tell whence the spark shall come that shall set it on fire.

—*Lord Bacon.*

●

SECTION XI.

JURIES DE MEDIETATE LINGUÆ.

It has been before noticed that an alien indicted or impeached of any felony or misdemeanor, is entitled to be tried by a jury "*de medietate linguæ*;" and I have shown that it is enacted by the 47th section of 6 Geo. IV. cap. 50, that on the *prayer* of every alien so indicted or impeached, the sheriff or other proper minister shall, by command of the court, return *for one half* of the jury a competent number of aliens, if so many there be in the town or place of trial, &c. Thus much is provided by chapter the third.

The trial "*de medietate linguæ*" was given by statute 28 Edward III. cap. 13; before which it was only to be obtained by the King's grant. This mode of trial is now used in cases in which one party is a foreigner, the other a denizen.

When the plaintiff is an alien, and defendant a denizen, the plaintiff, before the grant of the "*venire*," should cause to be stated on the roll that *he is an alien born*, and pray process according to the statute; furthermore it should be stated where he was born, in order that persons of the same country may be upon the jury, if *such can be found*; but if this be not stated before the "*venire*" is awarded, it cannot be inserted afterwards, neither shall such alien be empowered to challenge the array (or polls) for such omission.

If the defendant be an alien, on notice given, by his attorney, to the plaintiff or his attorney, the plaintiff

must enter it on the roll, to have a trial "*de medietate linguæ*" at his peril.*

The return of the venire for the summons of a jury "*de medietate linguæ*" ought to show which of the jury are aliens, and which denizens; and a full number of each must appear to be sworn; and it was decided, before the passing of the recent Act, that if a full number of six denizens and six aliens do not appear, the justices of Nisi Prius might, by construction of the statutes which give a "*tales de circumstantibus*,"† award such a *tales* for so many denizens and aliens as might be wanting.

"*Medietas linguæ*" is allowed in petty treason, murder, and felony; but for HIGH TREASON, an alien must be tried by the common law, and not *per medietatem linguæ*.‡

A "grand jury" ought not to be *de medietate linguæ* in any case.||

A jury almost like to that "*de medietate linguæ*" is allowed in other cases besides those of aliens; as on a *jus patronatus*,§ the jury must consist of six clergymen, and six laymen. So, also, on a criminal trial in the University courts, the jury must be half qualified men of the county, and half matriculated laymen of the University.

So, an alien cannot have a jury in right of his executorship or administration to a deceased person, unless in point of fact, such deceased was an alien himself.

* Trials per Pais, 245.

† Refer to chapter vii.

‡ Dyer, 144.

|| Wood's Institutes.

§ Latin:—A jury to inquire who is rightful patron of a church.

ADDENDA.

THE FORM OF "WARRANT" FOR RETURNING LISTS
OF JURORS.

County of) To the High Constable [or, To
) , one of the High Constables] of
 to wit.) the Hundred [Lathe, Warpentake, or other
) like District] of
) within the County aforesaid.

"These are to require you, within fourteen days after the receipt hereof, to issue and deliver (in the form hereunto annexed, or as near thereto as may be,) your precepts to the churchwardens and overseers of the poor of the several parishes, and to the overseers of the poor of the several townships within your constablewick, requiring them to make out and return true lists of jurors, and you are at the same time to annex to each precept a sufficient number of the forms of returns left herewith; and if you find that the number now left with you is not sufficient for all the places in your constablewick, you are to apply to me for more; and you are further required to attend at a petty sessions, in the last week of *September* next, (of which you shall have due notice) and such lists as you shall there receive you are to deliver to the next court of quarter sessions for this county, (riding, or division,) on the first day of its sitting, and at the same time to make oath of your receipt of such lists, and that no alteration has been made therein since your receipt of them."

“ If there is any parish within your constablewick that has no overseer of the poor except the churchwardens, you are in such case to treat them as the churchwardens and overseers of such parish, and to direct your precept, together with a sufficient number of forms of return, to them accordingly ; and if there is any parish or township which extends into any other constablewick besides your own, you are to treat every such parish or township as within your constablewick, provided the principal church of such parish or township is situated within your constablewick, and you are to issue your precepts with a sufficient number of forms of return accordingly ; and these several matters you are in nowise to omit, upon the peril that shall ensue.

“ Given under my hand, at _____ in the
 said county, the _____ day of
 in the year _____

Clerk of the Peace,
 for the said County, [*Riding, or Division.*]

THE FORM OF “PRECEPT” FOR RETURNING LISTS OF JURORS.

County of	}	To the churchwardens and overseers of the poor of the parish [or, To the overseers of the poor of the township] of
to wit.		
Hundred		
of		

“ By virtue of a warrant from the clerk of the peace of the said county, (*riding, or division,*) unto me di-

rected, you are hereby required to make out, before the first day of *September* next, a true list in writing, in the form hereunto annexed, containing the names of all men, being natural born subjects of the Queen, between the ages of twenty-one and sixty, residing within your parish, (or township,) qualified to serve on juries; that is to say, of every such man who has in his own name, or in trust for him, a clear income of ten pounds by the year, in lands or tenements, whether of freehold, copyhold, or customary tenure, or of ancient demesne, situate in the said county, or in rents issuing out of any such lands or tenements, or in such lands, tenements, and rents, taken together, in fee simple or fee tail, or for his own life, or for the life of any other person; and also of every such man who has a clear income of twenty pounds by the year in lands or tenements situate in the said county, held by lease for the absolute term of twenty-one years, or some longer term, or for any term of years determinable on any life or lives; and also of every such man who is a householder in your parish, (or township,) and is rated or assessed to the poor rate, or to the inhabited house duty, on a value of not less than twenty pounds, (if in *Middlesex*, thirty pounds,) and also of every such man who occupies a house in your parish (or township) containing not less than fifteen windows; and you are required to make out the said list in alphabetical order, and to write the Christian and surname of every man at full length, and the place of his abode, his title, quality, calling, or business, and the nature of his qualification, in the proper columns of the forms hereunto

annexed, according to the specimens given in such columns for your guidance."

"And if you have not a sufficient number of forms, you must apply to me for more; and in order to assist you in making out the list, you are to refer to the poor rate, and you may, if you think proper, apply to any collector or assessor of taxes, or any other officer who has the custody of any house tax, land tax, or other tax assessment for your parish, (or township,) and take from thence the names of men so qualified; and in making such list, you are to omit the names of all peers, all judges, all clergymen, all Roman Catholic priests who shall have duly taken and subscribed the oaths and declaration required by law; all ministers of any congregation of Protestant Dissenters, whose place of meeting is duly registered, provided they follow no secular occupation, except that of a schoolmaster, and produce to you a certificate of some justice of the peace, of their having taken the oaths and subscribed the declaration required by law; all sergeants and barristers at law, all members of the society of doctors of law, and all advocates of the civil law, if actually practising, and all attornies, solicitors, and proctors, if actually practising, and having taken out their annual certificates; all officers of the courts of law and equity, and of the admiralty and ecclesiastical courts, if actually exercising the duties of their respective offices; all coroners, all gaolers, and keepers of houses of correction; all members and licentiates of the royal college of Physicians in *London*, all members of the royal college of Surgeons in *London*, *Edinburgh*, and *Dub-*

ship) to inspect the original list, or a true copy of it, during the three first weeks of *September* next, *gratis*; and you are also further required to produce the said list at such petty sessions, and there to answer, on oath, such questions as shall be put to you by her Majesty's justices of the peace there present, touching the said list; and these several matters you are in nowise to omit, upon the peril that may ensue.

"Given under my hand, at _____ in the
said county, the _____ day of _____, in
the year _____

High Constable."

In *Wales* the form of *precept* is to be altered, according to the difference of qualification.

FORM OF THE "RETURN."

County of _____ } The Return of the Churchwardens and
to wit. } Overseers (or of the Overseers) of the
_____ of _____ in
the Hundred of _____ in the
said county, of men qualified to serve on
Juries.

<i>Parish or Township; in Towns, add the name of the Street.</i>	<i>Christian and Surname at full length.</i>	<i>Title, Quality, Calling, or Business.</i>	<i>Nature of Qua- lification.</i>
<i>All Saints, York.</i>			
Carey Street	Thorne, John	Merchant	Poor Rates.
King Street	Brown, James	Esquire	Copyhold.
Duke Street.....	Bond, Henry	Baker	Leasehold.
High Street	Jebb, George	Grocer	Freehold.
Fore Street	Cole, Charles	Innkeeper ...	Windows.
High Street.....	Long, John	Surgeon	House Assess- ment.

FORM OF THE "VENIRE FACIAS" IN THE KING'S BENCH AND COMMON PLEAS.

William the Fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, King, Defender of the Faith—To the sheriff of _____, greeting: We command you that you cause to come before us, (or if in Common Pleas, "before our justices,") at Westminster, on _____ next, after _____, twelve good and lawful men, qualified according to law, by whom the truth of the matter may be the better known, and who are in nowise of kin to A. B. the plaintiff, or C. D. the defendant, (giving the addition if in the court of Common Pleas,) to make a certain jury of the county between the parties aforesaid of a plea of trespass on the case (or otherwise, as the case may be) because, as well the aforesaid C. D. as the aforesaid A. B., between whom the difference is, have put themselves upon that jury: and have you there the names of the jurors and this writ. Witness, _____ at Westminster, the _____ day of _____ in the _____ year of our reign.

THE FORM OF "DISTRINGAS," IN THE KING'S BENCH.

William the Fourth, &c. To the sheriff of _____ greeting: we command you that you distrain the bodies of the several persons in the panel* to this

* It may be well to say in this place, that in "special jury" cases the names are set out as in the Master's list.

writ annexed named, jurors summoned in our court before us, between A. B., plaintiff, and C. D., defendant, by all their lands and chattels in your bailiwick, so that neither they nor any of them do intermeddle therewith, until you shall have other command from us in that behalf, and that you answer to us for the issues of the same, so that you have their bodies before us at Westminster, (or, if for *Middlesex*, before our "trusty and well-beloved _____, our Chief Justice assigned to hold pleas in our court before us, if he shall come on _____, the day of _____, at Westminster, in the said county;" or if for *London*, "at the Guildhall of the city of London, aforesaid,") on _____ next after _____, or before our justices assigned to hold the assizes in your county, if they shall first come on the day of _____, at _____, in your said county, according to the form of the statute in such case made and provided, to make a certain jury between the said parties of a plea of trespass on the case, (or otherwise, as the plea may be,) and to hear their judgments thereupon of many defaults; and have you there the names of the jurors and this writ. Witness at _____, the _____ day of _____, &c.

FORM OF THE "HABEAS CORPORA" IN THE
COMMON PLEAS.

William the Fourth, &c. To the sheriff of _____,
greeting: We command you that you have before
our justices at Westminster, (or, if for *Middlesex*,

“or before our faithful and well beloved _____, knight, our Chief Justice of our court of the Bench, appointed according to the form of the statute in such case made and provided, if on _____, the _____ day of _____, at Westminster, in your county, he shall first come, the bodies,” &c. : or, if for *London*, “if on _____, the _____ day of _____, at the Guildhall of the city of London, aforesaid, he shall first come, the bodies,” &c.) on _____, or before our justices assigned to take the assizes in your county, according to the form of the statute in that case made and provided, if on _____, the _____ day of _____, at _____ in your said county, they shall first come, the bodies of the several persons named in the panel to this writ annexed, being the jurors summoned in our court before our justices at Westminster, between A.B., plaintiff, and C.D., late of _____, in your county, defendant, of a plea of trespass on the case, (or otherwise, according to the plea,) to make that jury, and have there this writ. Witness, _____, at Westminster, the _____ day of _____, in the _____ year of our reign.

THE FORM OF “CONVICTION” OF OFFENDERS.

(Under the Act 6 Geo. iv. cap. 50, as prescribed by the 56th sec.)

Be it remembered, That on _____, in the year of our Lord _____, at _____, A.B. is convicted before me C.D., one of his Majesty's justices of the peace for the _____ of _____, for that he the said A.B. did

(specifying the offence, and the time and place when the same was committed, as the case shall be,) and the said A.B. is for his said offence adjudged by me the said justice, to forfeit and pay the sum of

. Given under my hand and seal, the day and year first above mentioned.

THE FORM OF "CHALLENGE TO THE ARRAY."

(Because the Sheriff is of kindred to one of the parties.)

And now at this day, to wit _____, came the aforesaid A., the plaintiff, and B., the defendant, by their attornies, and the jurors were impanelled, and demanded and came, and thereupon the aforesaid B. challengeth the array of the panel aforesaid, because he said that the panel was arrayed by one John Zouch, knight, now, and at the time of making the array aforesaid, sheriff of the said county of Derby, which said sheriff is a kinsman of the aforesaid John Manners, (the plaintiff,) to wit, the son of George Zouch, esq., son of John Zouch, knight, son of John Zouch, esq., son of William Lord Zouch, son of Alan Lord Zouch, son of William Lord Zouch, son of Elizabeth, daughter of William Lord Roos, father of William Lord Roos, father of Thomas Lord Roos, father of Eleanor, mother of George Manners, knight, father of Thomas Earl of Rutland, father of the aforesaid John Manners. And this he is ready to verify, whereupon he prayeth judgment, and that the said panel may be quashed. Which said challenge by _____, and by _____, triers, to this chosen and

sworn, is found true. And therefore let the panel aforesaid be quashed and removed.*

FORM OF THE "CHALLENGE."

(Because the Panel was returned at the Nomination of one of the parties.)

And upon this, the said _____, challenges the array of the said panel, because he says that the panel was arrayed by one J. S. esq., late sheriff of the county of _____ aforesaid, at the nomination of the said _____, and in his favour; which said challenge, by triers thereof sworn, is found true.

* Refer to Chitty's Burn's Justice, where it is cited from Coke's Entries.

MEMORANDUM.

STAGE COACHES AND OMNIBUSES.—By the new Act relating to stage-coaches (5th and 6th of Victoria I. chap 79,) the average space allotted to each passenger is required to be 16 inches, measuring in a line lengthways on the front of each seat. Children below five years of age, sitting in the lap, are not to be deemed passengers within the Act. The number of passengers which such carriage is constructed to carry is, as at present, required to be legibly painted, both inside and outside, for the information of travellers by these vehicles.

USEFUL HINTS TO GRAND JURORS AT QUARTER SESSIONS.

[I now direct the attention of my readers to the following useful hints to Grand Jurors at Quarter Sessions, which will conclude this division of the JURYMAN'S LEGAL HAND-BOOK.]

First. The grand jury are not to *try* the prisoner, but only to ascertain whether there is sufficient "presumptive evidence" to put the prisoner upon his trial. However, in cases where the person charged has *not* been sent to trial by a magistrate, (that is to say, where he is neither in custody nor out upon bail,) then the grand jury should be most careful in their examination of all the witnesses.

Secondly. The grand jury, on first entering on business, should proceed on some of the bills which have on them the fewest number of names, and should send such bills to the court as soon as found. When the court is in possession of three bills, the grand jury should not send any more bills until they are apprised by the officer attending the grand jury that the court is trying the last indictment; and then the grand jury should send to the court all the bills found or thrown out. By sending down single bills, (after the first three,) the court may be very inconveniently interrupted in the trial of prisoners.

Thirdly. Each witness should first be examined by the foreman, and no other juryman should put a question until such examination by the foreman is ended; and it would tend to preserve regularity, if such last

mentioned questions were put to the witnesses through the foreman.

Fourthly. The first witness called should be the prosecutor ; for, although he may not know as much of the transaction as other witnesses, he can inform the jury which of the witnesses know most.

Fifthly. In cases of larceny, the person who possesses the property, and who generally is the constable, should be the second witness called.

Sixthly. The person who took the prisoner into custody should always be asked, what the prisoner said in answer to the charge when arrested, and, also, when he was before the justice. It frequently happens that the prisoner has confessed his guilt ; but if a question should arise, whether such a confession was obtained by persuasion or threat, the grand jury should find the bill, leaving that question for the decision of the court and jury.

Seventhly. If the grand jury are satisfied that the prisoner should be tried, although they have examined only a few of the witnesses, it will not be necessary that they should examine all the witnesses ; but no bill should be *thrown out* without having examined every witness.

Eighthly. Of whatever number the grand jury may consist, no bill can be found but by *twelve at the least*.

Ninthly. The grand jury are not usually very strict as to documentary evidence ; they often admit copies, where the "originals" alone are evidence, and sometimes even evidence by parol of a matter which should be proved by *written* evidence.

Tenthly. It is not essential that the goods stolen should have been found.

Eleventhly. If possession of goods charged to have been stolen is proved against a prisoner, the duration of the possession is immaterial; though it be only momentary, and be instantly relinquished, it is a sufficient possession.

Twelfthly. A carrying away of goods is essential, but any the *least* removal of a chattel from the place which it occupied is a sufficient carrying away.

Thirteenthly. Although it should be proved that the prisoner is insane, the grand jury must not on that account throw out the bill.

Fourteenthly. In cases of doubt as to the *law*, the foreman of the grand jury should state such doubt to the court; and it is desirable that he should go on the bench for that purpose, otherwise stating the question publicly might prejudice the trial.

Fifteenthly. It is the duty of the foreman to report to the court, if any jurymen absents or misconducts himself.

MEMORANDUM.

One of the best features in the character of American society is this—that men never boast of their riches, and never disguise their poverty; but they talk of both as of any other matter fit for public conversation. No man shuns another because he is poor; no man is preferred to another because he is rich. In hundreds and hundreds of instances, men not worth a shilling have been chosen by the people and entrusted with their rights and interests, in preference to men who ride in their own carriages. * * *

THE ORIGIN, NATURE, AND SOLEMN OBLIGATION OF OATHS.*

ABOUT the remote antiquity, or the religious obligation of Oaths, no one, I presume, will pretend to cavil. "Are Oaths, in themselves, lawful to a Christian? or, are they altogether prohibited by the Gospel?" These

* We have recorded in the Bible and New Testament, the following passages, demonstrative of the solemn administration and making of oaths by the first inhabitants of the world, beginning indeed with the book of the Generations and ending with the Epistle of Paul the Apostle to the Hebrews,—here they are:—

בּוֹאשִׁית כְּדָו יְהוָה יִלְחֶה הַשָּׁמַיִם אֲשֶׁר לִקְחָנִי מִבֵּית אָבִי וּמֵאֶרֶץ
מִן לְדָתִי וְאֲשֶׁר רָפָר לִי וְאֲשֶׁר נִשְׁבַּע־לִי לֵאמֹר לְזֶרַעְךָ אֶת־הָאָרֶץ
חֲזֹאת חוּמֵי יִשְׂרָאֵל מִלְּאֹכְלוֹ לִפְנֶיךָ וּלְקַחַת אִשָּׁה לְבְנִי מִשָּׁם:
ח וְאִם־לֹא תֵאָבֶה הָאִשָּׁה לְלִכֵּת אַחֲרַיָּה וְנָקִית מִשְׁבַּעְתִּי וְזֹאת־נָק
אֶת־כְּנִי לֹא תֵשֵׁב שָׁמָּה:

Genesis, chap. xxiv. ver. 7 and 8.—"The Lord God of heaven, which took me from my Father's house, and from the land of my kindred, and which spake unto me, and that *swore* unto me, saying, unto thy seed will I give this land," &c. Ver. 8. "And if the woman will not be willing to follow thee, then thou shalt be clear from this my *oath*," &c.

שְׂמוּאֵל אִירֹבוּ וִיבָא הָעָם אֶל־הַתֹּעַר וְהָיָה הַלֶּךְ רֹבֵשׁ וְהָיָה־מִשִּׁנִּי
יָרוּ אֶל־בְּנֵי־יִשְׂרָאֵל הָעָם אֶת־חֻשְׁבֵּנָה:
ב ח וַיַּעַן אִישׁ מִהָעָם וַיֹּאמֶר הִשְׁבַּע הַשְּׂבִיעַ אֲבִיךָ אֶת־הָעָם לֵאמֹר
אֲרוּר הָאִישׁ אֲשֶׁר־יֹאכַל לֶחֶם הַיּוֹם וַיַּעַן הָעָם:

1st Samuel, chap. xiv. ver. 26.—"And when the people were come into the wood, behold, the honey dropped: but no man put his hand to his mouth; for the people feared the oath." And ver. 28. "Then answered one of the people, and said, Thy father straitly charged the people with an oath, saying, Cursed be the man that eateth any food this day," &c.

are questions of importance. I leave my readers to discuss and answer them. "If Oaths are in themselves lawful, are they, as at present administered and taken in England, calculated to promote truth and justice? and are they agreeable to the spirit of the religion

שמיאל ב בא ז ויחמל המלך על מפ יבשת בן יהונתן בן שאול
על שב עת יתה אשר בינתם בין דוד ובין יהונתן בן שאול :

2nd Samuel, chap. xxi. ver. 7.—"But the King spared Mephibosheth, the son of Jonathan, the son of Saul, because of the Lord's oath that was between them, between David and Jonathan the son of Saul."

רברי הימים ב טו טו ונס מעכה אם אסא הפלך הסירה מבכירה
אשר עשתה לאשרה מפלצת ויכרת :

2nd Book of Chronicles, chap. xv. ver. 15.—"And all Judah rejoiced at the oath: for they had sworn with all their heart," &c.

קהלת ט ב הפל פאשר לפל מקרה אחר לצדיק ולרשע לטוב
ולרשע ולטמא ולזבח ולאשר איננו זבח פטוב פחטא הנשבע
פאשר שבועה ירא :

And in Ecclesiastes, chap. ix. ver. 2.—"All things come alike to all: there is one event to the righteous and to the wicked; to the good, and to the clean, and to the unclean; to him that sacrificeth and to him that sacrificeth not: as is the good, so is the sinner; and he that *swareth*, as he that feareth an *oath*."

Λουκαν Κεφ. δ. 73. "Ορκον ὃν ὤμοσε πρὸς Ἀβραὰμ τὸν πατέρα ἡμῶν

Luke, chap. i. ver. 73.—"The oath which he swore to our father Abraham."

Εβραϊους Κεφ. στ'. 16. Ἀνθρώποι μὲν γὰρ κατὰ τοῦ μείζονος ὁμνύουσι, καὶ πάσης αὐτοῖς ἀντιλογίας πέρας εἰς βεβαίωσιν ὁ ὅρκος

17. Ἐν ᾧ περισσότερον βουλόμενος ὁ Θεὸς ἐπιδείξει τοῖς κληρονόμοις τῆς ἐπαγγελίας τὸ ἀμετάθετον τῆς βουλῆς αὐτοῦ, ἐμεσίτευσεν ὅρκῳ.

Hebrews, chap. vi. ver. 16 and 17 —"For men verily swear by the greater: and an oath for confirmation is to them an end of all strife." Ver. 17. "Wherein God, willing more abundantly to show unto the heirs of promise the immutability of his counsel, confirmed it by an oath."

which we profess?" These also are weighty interrogations. I leave to learned and devout scholars particularly, and to the thinking and right-minded people of England generally, the discussion of these questions. I humbly conceive it to be my duty so to do.

In addition to the above remarks, I may here just observe, that, as the administering the proper oath, *i.e. juramentum tritionis*, and the making of the same, must ever precede the important duty a JUROR is called upon rightly to perform,—it appears that the origin, nature, and solemn obligation not only of the oath he will have to make as such juror, but the necessity of Oaths in general, should be made to follow the synopsis of the Jury Laws, here prepared for his instruction and guidance. I therefore now trace the history of Oaths, from the first mention of them in the Bible,—which undoubtedly contains the prefigured dicta of the Divine mind,—through different ages and countries, down to the present time.

ORIGIN OF OATHS.—It is well observed by an ancient writer,* that, would men allow Christianity to carry its own designs into full effect; were all the world Christians, and were every Christian habitually under the influence of his religion in principle and in conduct, no place on earth would be found for OATHS;—every person would, on all occasions, speak the very truth, and would be believed merely for his word's sake: every promise would be made in good faith, and no additional obligation would be required to ensure its performance.

When entire reliance on any individual's credit is

† Hilarius, Comment. Matt. v. 33. This is also the sentiment of many other early Christian writers.

intended to be expressed, we often hear a phrase employed, asserting that "his word is equally good with his bond;" and in a Christian's mind, the love of truth, for its own sake, is tantamount to every other consideration. The highest Authority, too, that ever spake on earth, has pronounced that whatever is *more than this*—whatever goes beyond the simple statement of the truth—*cometh of evil*.^{*} Our Lord does not say (as some have misunderstood him to say,) that whatever goes further than the mere passing of one's word is itself sinful, but that its source is evil; it originates in what is in itself bad. And undoubtedly the evil in which oaths take their rise is the prevalence of falsehood and wrong, and the consequent prevalence of suspicion and distrust.† It is because we do not place confidence in the veracity of men in general, when they profess to speak the truth; it is because we cannot rely upon their good faith, when they make a bare promise, that we are driven to seek for something more satisfactory to ourselves, by imposing upon them a more binding responsibility than that of their mere word.

Such an obligation has been supposed in every age

* Matt. v. 37. Some, however, regard our Lord's words in this passage, as referring solely to the ordinary communication between man and man. The earliest and most celebrated writers of the Christian Church, seem to me to have considered them as applicable to all oaths. Whichever of these two views we adopt, His words equally refer us to the *origin* of the evil. Augustin (De Verb. Apost. Jac. v.) takes the view adopted in this chapter.

† Hesiod represents "Strife," the Malignant Deity, to have been the parent of a thousand evils, enumerating a long and black catalogue; and, as though he would put that end to the climax, beyond which nothing further could be conceived, he adds, "And that which most of all is the bane of mortal men, should any voluntarily incur the guilt of perjury,—AN OATH."—*Theogon.* 230, 231.

and country of the world to be afforded by the interposition of an *ΟΑΤΗ*.* Through all the diversified stages of society, from the lowest barbarism to the highest cultivation of civilized life—where the true religion has been professed, no less than where paganism has retained its hold, recourse has been had to Oaths as affording the nearest approximation to certainty in evidence, and the surest pledge of the performance of a promise.† Even in the present state of society, among professed Christians, however it may be lamented as a proof of the deficiency of sound religious principle, an oath seems to be considered necessary, as impressing the mind of almost every one, with a more awful sense of the guilt and danger of falsehood, and of the religious obligation to speak the very truth—the whole truth, and nothing but the truth. Whoever offends by falsehood, after binding himself by an oath to speak the truth, offends (as Archdeacon Paley remarks) with

* I may here remind the reader, that most of the northern nations, from the earliest times, were accustomed to the solemn administration and due making of oaths. The Danes not only took oaths, but also gave hostages for the due observance of the peace. In Anglo-Saxon history, however, we read of their having made and broken very many similar engagements, contracted in their most solemn manner, by “swearing” on the holy “ring or bracelet” consecrated to Odin.—ED.

† “Hercus,” or the God of Oaths, is said to be the son of Eris, or Contention; and fables tell us, that in the golden age, when men were strict observers of the laws of truth and justice, there was no occasion for oaths, nor any use made of them. But when they began to degenerate from their primitive simplicity, when truth and justice were banished out of the earth, when every one began to take advantage of his neighbour by cozenage and deceit, and there was no trust to be placed in any man’s word, it was high time to think of some expedient, whereby they might secure themselves from the fraud and falsehood of one another: hence had oaths their origin.—Potter’s *Antiq.*, b. ii., c. 6.

a high hand, in the face of God, and in defiance of the sanctions of religion.

DEFINITION OF AN OATH.*—The first point in our proposed inquiry, after tracing an oath to its true origin, would seem to be to settle its definition. And this is not so readily and easily determined as it might, at first sight, be supposed to be. A difficulty presents itself to us on the very threshold, involving, in some measure, our own national practice in England of employing the *imprecatory* form, and bearing directly on the objections of one of those few classes in our community, who refuse to bind themselves by the oath pre-

* An oath is an affirmation or denial of any thing, before one or more persons who have authority to administer the same, for the discovery and advancement of truth and right, calling God to witness that the testimony is true: it is called a *corporal* oath, because the witness, when he swears, lays his right hand on the Holy Evangelists, or New Testament. There are several sorts of oaths in our law, viz., *juramentum promissionis*, where oath is made either to do, or not to do, such a thing; *juramentum purgationis*, where any one is produced as a witness, to prove or disprove a thing; and *juramentum triationis*, where any persons are sworn to try an "issue," &c. Now, mark, all oaths must be lawful, allowed by the common law, or some statute: if they are administered by persons in a private capacity, or not duly authorised, they are void; and those administering them are guilty of a high contempt for doing so without a warrant of law, and punishable by fine and imprisonment.—*The Rev. James Endell Tyler, on Oaths.*

Nota bene.—If oath be made against oath in a cause, it is not apparent to the court which oath is true; and in such case the court will take that oath to be true which is to affirm a verdict, judgment, &c., as it would be absurd to set aside a verdict or judgment upon conflicting testimony. Now an affidavit, I may here remark, is an oath, also; but it is *in writing*; and to make "affidavit" of a thing, is to testify it upon oath in writing. Affidavits are most frequently *sworn*; that is, the oath is administered by a court openly, or by a judge or other *competent* officer in any other place, and are used to verify various proceedings or acts done in the course of a cause, &c. See, also, *Tomlin's Dictionary.*

scribed by our law. Dr. Paley* seems not to have been aware of this difficulty, nor of the distinction made conscientiously by many excellent Christians. His definition of an oath runs thus: "It is the calling upon God to witness, *i.e.*, to take notice of what we say, AND it is invoking his vengeance, or renouncing his favour, if what we say be false, or what we promise be not performed."

It is somewhat curious, that the Archdeacon's next words are, "Quakers and Moravians refuse to swear upon any occasion." This is a mistake. The fact is, that whilst Quakers object to an oath in any form, the Moravians would not refuse to swear, were that form of oath observed which the first part of Dr. Paley's definition specifies, namely, the solemn appeal to God as the witness of our words; but they shudder at the thought of imprecating, under any circumstances, directly, and in their own words, the vengeance of the Supreme Being upon their souls; an imprecation implied in the latter member of his definition. They, consequently, refuse our form of swearing, "So help me, God;" SO, upon condition of my speaking the truth, and not otherwise.

This distinction is not recognised in an Act lately passed, 9 Geo. IV. c. 74, for the better administration of justice in India; which is the more surprising, because the law was made under the auspices of so able and so well-informed a person as the then Chairman of the Board of Control; it is usually called Mr. Wynne's Act. Its provision, as to the point before us, is couched

* Moral Philos., b. iii., part 1, c. 16.

in these terms :—" And be it enacted, that every Quaker or Moravian, who shall be required to give evidence in any case whatever, civil or criminal, shall, instead of taking an oath in the usual form, be permitted to make his or her solemn affirmation or declaration, in the words following, that is to say—I, A. B., do solemnly, sincerely, and truly declare and affirm." This confusion, for such it is, is the more remarkable, because Acts of Parliament had already most clearly recognised the distinction. By 8 Geo. c. 6, the Quakers were allowed, for certain purposes, instead of taking an oath, to make a declaration in the very words, word for word, of the form prescribed by Mr. Wynne's Act for both Quakers and Moravians ; whereas, by 22 Geo. II. c. 30, the Moravians were relieved, by having the form of attestation substituted which no Quaker would admit. This law is intituled " An Act for encouraging the people, known by the name of the ' Unitas Fratrum,' or United Brethren, to settle in his Majesty's Colonies in America." Its enactment is this : " Every person, being a member of the Protestant Episcopal Church, known by the name of ' Unitas Fratrum,' or United Brethren, which Church was formerly settled in Moravia and Bohemia, and [members of which] are now in Prussia, Poland, Germany, the United Provinces, and also in his Majesty's dominions, who shall be required, on any lawful occasion, to take an oath, shall, instead of the usual form, be permitted to make his solemn affirmation in these words—I, A. B., do declare, in the presence of *Almighty God*, the *witness of what I say*." This is to all intents and purposes an *oath*. It is, I think, matter of regret, that this distinction, so

evidently recognised in former Acts, should have been overlooked in Mr. Wynne's Bill. It is not a mere verbal distinction. The difference is real and practical. No one could make the Moravian's attestation, unless he acknowledged the Deity as the moral Governor of the world. The Quaker's affirmation an Atheist might make without any inconsistency.

Phillips, indeed, in his beautifully luminous and able *Treatise on the Law of Evidence*, seems to take it for granted, that "our law (like that of most other civilized nations) requires a witness to believe, not only that there is a God and a future state of rewards and punishments, but also that, by taking the oath, he *imprecates* the divine vengeance upon himself, if his evidence shall be false." * But, as we shall often be reminded, this view is neither universally taken, nor is it insisted upon by the jurisprudence of all European countries. M. Merlin, having stated that, by the ancient law, the members of two religions in France had the privilege of taking their own peculiar oath, Jews and Anabaptists, observes the latter, "their religion only allows them to say 'Yes,' to the form of oath administered by the judge, and forbids them *to lift their hand*, because they believe that would be to provoke the Lord from the highest heaven; an act which, according to them, would be an impiety more fitted to destroy the credit of him who should be guilty of it, than to merit confidence." †

Conceiving that the reader might desire to review for himself, the chief definitions of an oath, adopted

* Phillips, c. 3.

† Répertoire Universel et Raisonné de Jurisprudence.

either by modern or ancient writers, I have put together so many of those which have offered themselves to my notice as I thought might be of general interest.

All the definitions which I have been able to examine, may conveniently be arranged under two heads: first, such as contain no expressed imprecation; and, secondly, such as embrace, in more or less explicit language, an imprecatory clause.

Before we adopt or reject any one of those definitions, or substitute any other of our own, I am desirous of soliciting the reader's attention to one or two observations on a question which appears to me to be of prime importance; and yet, to have been often regarded in a mistaken point of view.

I cannot but consider it in itself an erroneous supposition, and a cause of practical mischief, to consider either that GOD will become a witness of our words *in consequence* of our calling Him to witness them, or that His judgment will fall upon us *in consequence of* our invoking it. This error, it is to be feared, derives much countenance and encouragement from our present practice, and the language which we usually employ. The only true state of the case is altogether opposed to this supposition: and we ought habitually to impress upon ourselves and others, that God *is and must be* a witness of all we do and say, without our appealing to Him to become so, and that He *will* punish falsehood and wrong, without any invocation on His vengeance made by ourselves. He does not need us to draw His attention to our words, or to the secrets of our hearts: He does not need our permission to punish,

should we dare to utter with our lips what our conscience knows to be wrong.

The object of the Form of Adjuration should be to point out this ; to show that we are not calling the attention of God to man, but the attention of man to God ; that we are not calling upon Him to punish the wrong-doer, but on man to remember, that He will.

On these principles (which will probably approve themselves to most persons,) if it be deemed necessary to fix upon a precise Definition, I must exclude from mine whatever would imply more on the part of the juror than a pledge, that he is speaking under a solemn sense of the presence of the Deity, the witness of our words and actions, the moral Governor of the world, the Judge of mankind, and the just avenger of falsehood and wrong. It was on similar principles, that the early Christians used to say, " Whatever we affirm, we do so as in the presence of God ; and that, to us Christians, is the most solemn oath."

It is not, indeed, always necessary in a moral dissertation, for the writer formally to adopt precise definitions. It is often quite enough practically, if he takes care to employ the same word in the same sense throughout. I am, however, the rather inclined to propose one in this place, because some of those definitions which have been most current, especially in modern* times, appear to have done much to countenance

* I have never found either the definition of an oath, or the form of an oath *implying the imprecatory clause*, acquiesced in by the early Christians. The ages when the most dreadful imprecations were used, and a multiplication of them was relied upon as a greater security for the truth, were the ages of religious darkness and corruption.

and propagate the erroneous views to which I have just referred. The following definition, then, seems most nearly to coincide with the view which I have been led by inquiry and reflection to take of the essential nature of an oath "AN OATH IS AN OUTWARD PLEDGE GIVEN BY THE JUROR THAT HIS ATTESTATION [OR PROMISE] IS MADE UNDER AN IMMEDIATE SENSE OF HIS RESPONSIBILITY TO GOD."

Without improperly anticipating what we must examine hereafter, I may, in this early stage of our inquiry, express my opinion, that whether the distinction of the Moravians be too finely drawn or not, were our English oath to be reconstructed, a form of adjuration might be devised, which would appear to the generality of persons unobjectionable—more reverential and pious, and, at the same time, equally secure.* The

* It is a fact, that hundreds of "jurors," and others, must have witnessed in the court of the Sheriff of London, Red Lion Square, where *oaths* have long been made upon a small, thin, ill-looking book, (containing, no doubt, a printed copy of the holy gospels,) but so insignificant in its appearance, and so time-worn its binding, that the casual observer is left to conjecture whether the same, on inspection, would prove to be a genuine copy of the NEW TESTAMENT or otherwise. What a sarcasm upon the devout administration and solemn making of an OATH is this?

In other law courts, what do we not behold in this respect? In the criminal courts of the Old Bailey, for example. Do the unqualified persons appointed to administer Oaths in those courts, before they proceed to "swear" the witness, take care to *open up* the sacred volume to him or her, with a view, if possible, to remind each party about to give "evidence" before the bench, the bar, and the jury—and, furthermore, and above all, before GOD himself (invisible to human eyes though the Almighty must ever be, because God is a spirit, and has no corporeal organization)—of the high and important *religious* obligation that pertains to the oath such party is about to make? Do not the coarse manners and changeful gesticulations of the persons at present appointed to administer oaths in these and other courts of justice, together with the mean appearance of the book of the "holy gospels" itself, go far to destroy the

persons sworn would simply declare their sense of the presence of God as the witness of the truth, and their

sanctity which should ever accompany so solemn a rite, and so religious an obligation? Why should not oaths made by witnesses, called upon to give evidence of the guiltiness of a yet *uncondemned* culprit, charged with "murder," "rape," &c.—their fellow-creature—be preceded by and accompanied with, as much *religious* ceremony and imprecatory admonition, as is the coronation oath made by sovereigns?—the "life" of a fellow-being is at stake! the "personal liberty" of a brother-citizen is in jeopardy!—and in a like manner *jurors themselves* permitted to make oath upon the "holy gospels?"—The answer is ready.

And yet the moral deformity of the system is confessed; and, although it is known to canker and pollute the otherwise pure stream of public justice, still do we go on from term to term, without even complaining of this hideous practice.

Is it because we have the happiness to live, not only in a highly favoured, but in a religiously civilized country, where the Divine apostolical faith is pre-eminently the "revered religion" of the church-loving people; that is to say, the national, or established form of Christian worship; and where that time-hallowed religion, too, is known by every true and faithful protestant to have been grounded, from the first, upon HOLY WRIT;—I ask, is it because we live in the daily enjoyment of all these so great privileges, that therefore we should neglect to see discharged—in a view to the obtainment of the purest public justice—one of the most important ministerial duties the dignified Christian lawgiver has to perform? The question, however, now, would seem to be this, whether the past mode of administering oaths, and the precipitate and reckless making of the same by careless and misguided witnesses, does not amount to so many wilful profanities in the eye of the Almighty? Will any discreet and intelligent person pretend to say, that the cause of our holy protestant religion can be advanced, in the remotest degree, by so mechanical an exercise of one of the most wholesome privileges guaranteed to us by the constitution? The appearance in court of an ordained clergyman, (or a newly-appointed minister,) for the exclusive purpose of administering oaths, there can be little doubt, would have a most salutary effect on the mind of every uninstructed and unthinking witness. Our holy religion, and its lovely precepts, would thenceforward be more sincerely revered; public justice at the hands of the learned judges of the land, would also receive a new conservative impetus, calculated to lessen the toilsome labours of the court, and to render more complete and satisfactory to suitors, the "juridical decisions" of our law courts, both civil and criminal.—ED.

responsibility to Him as the Judge of mankind, leaving the punishment of falsehood to His righteous judgment, without expressly imprecating, in any case, the Divine vengeance on themselves.

DEFINITIONS OF AN OATH NOT IMPLYING THE IMPRECATORY FORM.—We shall find many definitions of an oath which imply nothing of direct imprecation, both among Christian and Heathen writers. Cicero calls it “an affirmation under the sanction of religion.”* Gregory of Nazianzen defines it to be “a solemn affirmation of the truth, as in the presence of God.”† The author of *Fleta* seems to have embraced in his view, those corrupt modes of swearing by other attestations than by a direct appeal to God himself, which disgraced Christendom too long, and unhappily, have not yet ceased to be its shame;—“an oath is an affirmation, or negation on some point, confirmed by the attestation of a holy thing.”‡ This corresponds very closely with the authorized definition at the present time in Spain, “An oath is an attestation, or affirmation, on any subject, by the name of God, and some sacred thing. And no one ought to swear by heaven or earth, nor by any creature;—by nought except what is holy and sacred.”|| Dr. Sanderson, in his *Lectures* before the University of Oxford, professing to supply its full definition, says, “an oath is a religious act, in which, to establish a point in doubt, God is invoked as a wit-

* Cic. de Off. iii. 29.

† Greg. Naz. In defin. Juram. Dom. Exod. xxii. 11. See Sanderson.

‡ *Fleta*, lib. v. 22.

|| Perez, *Compendio del Derecho Publico y Commun de Espana*, 1784.

ness." * Dr. Johnson describes an oath to be "an affirmation, negation, or promise, corroborated by the attestation of the Supreme Being."

Voet, in his notes on the Pandects, defines it to be "a religious affirmation of the truth, or an invocation of the name of God in witness of the truth:" and our celebrated Coke defines it thus; "An oath is an affirmation or denial by any Christian of any thing lawful and honest before one or more that hath lawful authority for advancement of truth and right, calling upon God to witness that his testimony is true."—3 Inst. 74.

DEFINITIONS OF AN OATH IMPLYING AN IMPRECATION.

—Other definitions there are, which imply the clause of imprecation or curse; thus, in the Pandects, an oath is defined to be "a religious asseveration by the invocation of God as an avenger, if the juror, knowingly, should deceive." †

Agreeably to which, Puffendorf defines an oath to be "a religious asseveration, by which we either renounce the mercy, or imprecate the vengeance of Heaven, if we speak not the truth." Lord Chancellor Hardwicke, in the preliminary proceedings in the case of Omychund and Barker, said, "What is universally understood by an oath is, that the person who takes it, imprecates the vengeance of God upon him if the oath he takes is false." In giving judgment, however, the same learned person speaks very differently, "All that is necessary to an oath is an appeal to the Supreme Being, as thinking him the rewarder of truth and the avenger of falsehood." In the same cause, Sir Dudley

* De Jur. Prom. Oblig. Prælec. 1. 1710.

† Pandect xii. 2.

Rider, then Attorney-General, said, "All that in point of nature and reason is necessary to qualify a person for swearing, is the belief of a God, and an imprecation of the Divine Being upon him, if he swears falsely." *

M. Merlin describes it as being "as well a promise, the sincerity of which is guaranteed by the invocation of the name of God, as also the affirmation of a fact, for the truth of which God is taken as witness." Mi. chaëlis, to whose chapter on oaths and perjury we cannot refer without mingled sentiments of approval and dissatisfaction, appears to go to the full length of regarding it in all cases, as "a solemn call to God to punish us, both here and hereafter, through all eternity, if we tell a falsehood, or do not keep our promise." † Bishop Burnet, who writes very satisfactorily on the subject, thus instructs us; "An oath is an appeal to God, either upon a testimony that is given, or a promise that is made, confirming the truth of the one and the fidelity of the other. It is an appeal to God who knows all things, and will judge all men; so it is an act that acknowledges both his omniscience and his being the Governor of this world, who will judge all at the last day according to their deeds, and who must be supposed to have a more immediate regard to acts in which men made him a party." ‡ We have already seen that our own form, "So help me God," is at once very classical and very heathenish. || The definition of an oath most nearly corresponding with the imprecation really im-

* Atkyns's Rep. vol. i., s. 20 and 48.

† Mich. on the Laws of Moses, 256.

‡ Burnet, Art. 39.

|| Part ii. c. iv.

plied in that form, is one quoted by Brissonius. "The nature of an oath involves our saying, 'may the Deity so far favour me as that is true which I affirm.'"^{*}—*The Rev. James Endell Tyler, on Oaths.*

^{*} Asconius Pædianus apud Briss.

The Egyptians believed in a Deity, or Supreme Being, of whom it was said *Ἐγὼ εἰμὶ πᾶν το γεγονός, καὶ ὄν καὶ εἰσόμενον*, (I am all that has been, is, or shall be.) This Deity was called by them Isis: but their supreme god was Piha, or Creph, or Agathos, the dæmon to whom they (the Egyptians, mind) ascribed every attribute of a great and magnificent nature. They, too, like the Druids in Britain, and the Israelites in Judea, raised up "altars" to the ALMIGHTY, as acknowledgments for benefits received from Him, and, as "solemn" attestations of the *truth* of oaths that they swore by.

The Carthaginians were accustomed to *swear*, like the Druids, by the "eternal stability of the Divine Being." The father of Hannibal made him swear on the "altar" *Eternal hatred to the Romans.*

According to Eusebius, the Romans adored the Deity on the top of the Capitoline rock, where the first temple for public worship ever built in Rome was erected. Here the Romans swore their most tremendous oaths, *Per Jovem lapidem.*—ED.

MEMORANDUM.

ADVANTAGES OF POVERTY IN EARLY LIFE.—An English judge being asked what contributed most to success at the bar, replied, "Some succeed by great talent, some by high connections, some by a miracle, but the majority by commencing without a shilling."

OUR LORD'S OATH BEFORE THE HIGH PRIEST.

I HAVE alleged our Saviour's example when adjured by the High-Priest as decisive, establishing beyond further dispute the lawfulness of an oath to Christians. The interpretation of the passage in the gospel, (St. Matt. xxvi. 63,) which I have deemed the only sound interpretation, represents our Lord as having taken a *judicial* oath before the constituted authorities of his country. A doubt has been suggested on the correctness of that interpretation. The other arguments brought forward would, I think, independently of this, satisfactorily establish the legality of an oath. But this argument, if it be sound and unassailable itself, is so entirely conclusive, admitting of no appeal, that I felt anxious to put my reader in possession of the nature of the evidence, and the result of my inquiries, which, I confess, have left no doubt whatever in my own mind on the subject.

The question, and I believe the only question, is this, Did the High-Priest, when he addressed our Saviour, actually administer an oath to him, agreeably to the laws and customs of the Jews? Or did he merely call upon him (urging the strongest motive to compliance, even his reverence for the living God,) to make an answer aye or no to his question. This is, I believe, the only alternative.

The Greek word *ἐξορκίζω*, which our translation renders by the word of Latin origin, "I adjure thee," and which I have considered in the text as equivalent to

the English expression, "*I call upon thee to declare UPON OATH,*" does not occur in any other passage of the New Testament.—*Rev. James Endell Tyler, on Oaths.*

THE LAW MUST BE VINDICATED.

"Examples must be made of all who, in whatever manner, set the law at defiance. Men must be taught that the law is not to be broken and the peace disturbed with impunity. When the civil force, then, is appealed to with this view, bad men, who have private reasons for detesting the constabulary, will of course take the opportunity of assaulting them. Forgetful of the plain and undeniable truth, that the 'civil powers' are even more for the protection of the lower and the poorer orders than of other classes, ignorant people assemble against them; and the opportunity is selected by wicked men of wreaking their mean malignancy upon those whose vigilance they have reason to dislike. Depraved men, too, avail themselves of the confusion created by foolish men, for the purpose of robbing; and they certainly have as much right to plunder as the others have to riot; the law condemning both as decidedly, though, of course, distinguishing as more guilty these who add robbery to rioting. It is necessary this, also, should be impressed upon the minds of the people—that if, in consequence of an unlawful assembly, and the attempt to disperse it on the part of the authorities, any one so engaged were to be killed, the *guilt* of 'murder' would be shared by all who were included in that assembly."—*Lord Chief Justice Denman—at York.*

THE OATH OF HAROLD.

HISTORY records many remarkable instances of the superstition with which oaths were sometimes taken on relics. One in particular, which is by no means the least interesting; whilst it tends to confirm what is constantly forcing itself upon our mind, that all attempts to make the religious obligation more binding, whether by the multiplication of oaths, or by adding to the superstitious circumstances attending them, are baffled entirely when the principle of upright dealing is absent. The guilt of the perjurer may, indeed, be enhanced, just as a person who wilfully repeats again and again a bare falsehood, may be considered guilty of more deliberate sin; but the value of the pledge is not proportionably increased. The scene is taken from the Bayeux tapestry, a very extraordinary production, describing successive events in Harold's and William's career; and, not without a considerable degree of probability, referred to the skill and industry of the Conqueror's queen. It is still preserved in the cathedral of Bayeux, in Normandy. I copy the following description of the piece from *Turner's History of the Anglo Saxons*:—"William appears without armour, on his throne, with a sword in his left hand extended. Near this are two repositories of relics: Harold is between them, with a hand on each." [In this particular, I cannot help thinking that Mr. Turner is mistaken. The case next William, on which is Harold's right hand, is, I think, undoubtedly a repository of relics. Two handles, projecting at each end, seem to imply

that it was a moveable case. But that on which Harold's left hand is laid is, I think, an altar: there are, apparently, steps at its base, whilst it has no handles. And this would correspond more exactly and literally, I think, with the account in the *Roman de Rou.*] "The inscription is, 'HERE HAROLD SWEARS TO DUKE WILLIAM.' The historians state that Harold swore to promote William's accession to the throne of England, on Edmund's [he means Edward's] death; to marry his daughter; and to put Dover into his power. Some other authorities mention that William, after Harold had sworn, uncovered the repositories, and showed him on what relics he had pledged himself: and Harold saw with alarm their number and importance. If this be true, these two great warriors were, at least in their religion, men of petty minds; or they would not have believed that the obligation of an oath was governed by the rules of arithmetical progression." *

The authority on which this circumstance of William's cunning, and Harold's superstitious horror, chiefly rest, is that of the *Roman de Rou*, written, as we are told, by Robert Waice, who lived about fifty years after the Conquest, and was canon of Bayeux. Probably, the insertion of so much of the *Roman de Rou* as explains this transaction will not be unacceptable.

* All the historians represent Harold as having pledged his solemn oath to William. Rapin says, "He made him swear on the Gospels," but this, probably, is a mistake, for Simeon of Durham, to whom he refers, expressly mentions the relics. Henry of Huntingdon affirms, that "he swore upon many and most choice relics of the saints;" but he does not add, that William deceived him into a more awful oath than he thought for: nor does either Brompton or Ingulphus, or William of Malmesbury, or Simeon of Durham.

I have given, also, a verbal translation, the old French being, in many parts, obscure, and difficult to interpret without the help of annotations.—*Ibid.*

Co se li plaist li jurera	And if he pleased he would swear to this,
Et Willame la graanta.	And William consented.
Por rechoivre cest serment	To receive this oath
Fist assembler un Parlement	He called a parliament ;
A Baieux (so solent dire)	At Bayeux (so they say)
Fist assembler un grant concire	He convened a great council.
Toz li corz saintz fist demander	He called for all the relics (<i>the holy bodies</i>)
Et en un liu tuz assembler	And collected them into one place ;
Tut une cuve en fist emplir	He filled a whole coffer full of them,
Pois d'un paele les fist covrir.	He had them covered with a pall,
Ke Heraut ne sout, ne ne vit	That Harold might neither know nor see,
Ne ne li fust mostre, ne dit.	Nor was it shown or told to him ;
De suz out une filatre*	Above there was a Reliquary,
Tut li meillor k'il pout eslire	The very best he could choose,
E li plus chier k'il pout trover	And the dearest he could find,
"Oil de boef" l'ai oi nomer	I have heard it called "The Bull's Eye."
Quant Heraut suz sa main tendi	When Harold held his hand over it,
La main trembla, la char fremi	His hand trembled, his body shuddered,
Poiz a jure et a promi	Then he swore and promised,
Si come home ki eschari	As a man upon his oath,
Ele la fille al Duc prendra	He would take Ela, the Duke's daughter,
Et Engleterre al Duc rendra	And deliver England to the Duke.
De so li fera son poeir	Of this he would do his power
Sulunc sa force e son savier.	According to his might and knowledge,
Empres la mort Ewart s'il vit	After the death of Edward, should he live,
Si veirement Dex li ait	So truly may God him help,
E li corz sainz ki floe sont	And the holy relics which are there.
Plusors dient: "Ke des li dont."	Many say, "God grant it him."
Quant Heraut out li sainz beisiez	When Harold had kissed the relics
Et il fut suz levez en piez	And was risen on his feet,
Verz la cuve li Duc le trait	The Duke led him towards the chest,
E lez rave cuve ester le fait	And made him stay by the chest.
De la cuve a le paesle oste	From the chest he took the pall
Ki lut aveit acouete	Which had concealed all,
A Heraut a dedenz monstra	To Harold he then showed
Sor kels cors sainz il a jure	On what relics he had sworn ;
Heraut forment s'espoanta	Harold was sadly alarmed
Des relikes kil li monstra	At the relics he showed him, &c.

* Une filatre, phylacterium; a phylactery.

OATH OF WILLIAM RUFUS.

Our English chroniclers represent William Rufus, on every occasion on which he used strong language, as employing an oath, "By St. Luke's face." Rapin and others call it his favourite oath. This is a very curious mistake, originating in a mistranslation of the Latin phrase of some ancient historian, probably Eadmer, or William of Malmesbury. "He swore," say they, "*per vultum de Lucca*," by the face of, or at Lucca, without the shadow of a reference to the Evangelist. The inquiry into this curious fact opens a passage of English history more fully than it is usually presented to us, and leads us to matter also of general interest; a circumstance which, I trust, may suggest a sufficient apology for this digression.

William the Second was a very headstrong and irreligious man, reckless of Providence, with ungovernable passions, self-willed, blind to danger, and regardless of duty. On one occasion of his employing the oath in question, these qualities showed themselves so prominently, and they so clearly develope the character of the man, that I take leave to insert the narrative more at length than the bare explanation of his oath might require.* The king was in the full enjoyment of a hunting-party when a messenger, from beyond sea, brought him tidings that a town which had lately fallen into his hands was besieged by the enemy. Instantly equipped as he was for the chase, he turned his horse's

* Eadmer, i., 124.

head, and made for the sea. On his attendants suggesting the propriety of waiting till his forces could be collected and marshalled, he scornfully replied, "I shall see who will follow me. Think ye I shall not have an army?" He arrived at the coast almost alone. The wind was contrary, the weather stormy, and the sea in dreadful agitation. Resolved to pass over at the moment, when the mariners remonstrated and implored him to wait for a less foul sea and sky, he exclaimed impetuously, "I never yet heard of a king perishing by shipwreck; loose the cables, I say, instantly. You shall see the elements conspire in their obsequiousness to me." William crossed in safety, and the first rumour of his landing scattered the besiegers. A leading man among them, one Helias (the Earl of Flesche, his competitor for the Earldom of Maine,) was taken prisoner, and brought before the king, who saluted him with a jeer, "I have you, master." To this his high-minded captive (whom, as the historian remarks, his imminent danger could not teach prudence or humble language,) replied, "It was by mere chance you took me; if I could escape, I know what I would do." Upon this, William, almost beside himself with rage and fury, *clenching his fist* at Helias, exclaimed, "You rascal! What would you do? Begone! away! fly!" and "By the face of Lucca (*per vultum de Lucca*) if you conquer me, I will make no terms with you for this free pardon."* *Ibid.*

* I know not whether I have given the correct translation of the historian's own words, "Obuncans Heliam." The word is not classical, nor do I remember to have met with it elsewhere. "Obuncis pedibus" is a classical expression, used by Ovid, for the clenched talons of an eagle. I have, therefore, conjectured that

THE FACE OF LUCCA.

IN consequence of different legends of "The Holy Face" existing in the Church of Rome, I was for some time under a mistake as to the real origin of this oath. "The Face of Lucca," however, by which William swore, was undoubtedly a crucifix in that town. Butler, in a note, on the life of *St. Veronica of Milan*, calls it a very ancient, *miraculous* crucifix, in the Chapel of the Holy Cross in the Cathedral dedicated to St. Martin. Lord Lyttleton says, "There is at Lucca, in Tuscany, an ancient figure of Christ, brought there miraculously, as they pretend, and which they say still continues to work miracles. They call it 'Il santo volto di Lucca,' and are so proud of possessing it, that it is stamped on their coin with this legend, 'Sanctus vultus de Luca.' " In an Italian book published in 1721, called "*Il Forestiere informato delle cose di Lucca*," the legend is given in detail at great length, with much pomp of circumstance. The author calls it the Holy Cross, and says it is the Image of Jesus crucified. He tells us it was made in consequence of a miraculous command given to the Nicodemus of the Gospel to go to *mount Cedron*, and carve that image; where he formed it under the immediate guidance of heaven, "Con arte divina e non sua." An angel long afterwards, by a new miracle, commanded the Bishop of Lucca, to go with all his clergy to Porto di Luni, whither it had been miraculously transported from the

the writer's meaning was as I have expressed it. Perhaps it means seizing, grasping, clenching Helias. Another interpretation is, "beckoning to him with his finger."

Holy Land, and to bring so vast an acquisition to their own city : and after stating that Nicodemus had enclosed in it many precious relics, which had been handled by the Most Holy Virgin ; he further adds, “ that as the first Christians devoutly worshipped it, he is not deceived, who believes that it was also adored even by the Holy Virgin herself, and by our dear St. Paul, by St. Peter the Head of the Church, and by all the Apostles and Disciples who were stationed together there.”

There are two very curious passages in Dante, which refer to the superstitious veneration paid to this image. A sinner from Lucca is represented, by the poet,* as thrown into a sea of boiling pitch, where he tumbles and rolls over and over, in the dreadful flood, like a porpoise, to intimate that when on earth he would duck down and throw himself into the same posture, with his forehead on the ground, before the image of Lucca ; when he is assured, in his torments, by his triumphant foe, that his reliance on that relic would avail him nothing :—

“ Here hath the holy countenance no place.”

An oath very similar to this of William,—“ By the Holy Face,”—is used to the present day in Spain, especially in Valencia. Its origin is found in one of the most engaging and affecting, but not on that account less unfounded legends of the church of Rome. How very prone are men of all ages to do evil that good may come, to invent or propagate what is not true, with a view of securing some desirable end ! How much are

* Compare Dante Inferno, xxi. 49., with xxii. 19.

Christians, of every age, in need of being warned against attempting to spread or uphold the truth by unhallowed means ! Pious frauds, though often sanctioned on earth, offer a direct insult to the majesty of the God of truth and justice. We may be sure he abominates a falsehood, even when the man who has forged it, thinks he utters it in the service of God ; and we may be equally sure that if we cannot compass an end in any department of religion, or morality, or civil government, without relinquishing the very truth, that circumstance is of itself an intimation, as plain as if it were spoken by the tongue of an inspired prophet, that the specific object, however desirable, is not intended by Providence to be brought about by such means of ours, and that it is presumption and sin in us to attempt it. Many of the Romish legends sprang unhappily from less worthy motives than mistaken zeal for the Gospel, and we can only lament the depravity which would employ the religion of Jesus as an instrument for compassing selfish, ambitious and worldly objects. And even when we are required, in charity, to refer the invention of a legend to a well-intentioned but misguided zeal, however the imagination may be pleased, and our interest excited by the narrative, no sooner do we reflect upon it as an unhallowed auxiliary to the word of the Eternal and Omnipotent One, than we turn from it in shame, and pain, and sorrow. Such is the "Legend of the Holy Face" As our blessed Lord, so runs the tale, was bearing his cross towards Calvary, overwhelmed by the weight which pressed his soul, and bent his body to the earth, he stumbled three times. In Spain there are prints representing this affecting scene, and called,

“The three Falls.” On one of these moments of anguish, a female from Verona, with an affectionate desire to relieve his suffering, wiped his face with a handkerchief, thrice folded : an exact image of his countenance was left impressed on each of the three folds. One of these the people in Valencia pretend to be still kept in a cathedral of their own, exhibiting it on certain holy days with much ceremonial solemnity. And by this “holy face” they swear.*—*Ibid.*

* There are various discrepancies in the details of this legend. Whilst some persons assure us that the etymology of Veronica from Vera Iconica is an after-thought, not worth notice, and that the most correct legend represents the female as having been a virgin from Verona, others consider this latter account as totally erroneous, having its origin only in an ignorant confusion of names and circumstances. I believe, however, it is very current in Spain. I have thought it best to add the note of Mr. Butler ; “St. Veronica of Milan, 1497. The print of the holy face of our Saviour on a linen cloth is kept at St. Peter’s church at Rome, with singular veneration. It is mentioned in an ancient ceremonial of that Church, 1143. It was called Veronica, or true image of our Lord’s face, from *Vera* and *Iconica*, the word used by St. Gregory of Tours, from the Greek word *Icon*. Some moderns imagine, that it served at the burial of our Lord ; others say, that a devout woman wiped his face with it, when he was fainting under the load of his cross going to Calvary. In some particular missals, as in that of Mentz, 1493, among the votive masses is one, ‘De sancta Veronica seu Vultu Domini,’ in the same manner as there is a mass ‘On the Cross.’ Such devotions are directed to honour our Lord with a remembrance of this relic, memorial, or pledge. From this office of the Veronica is taken an anthem and prayer which are said in some private churches, as a commemoration of the Holy Face of Lucca, which is a very ancient crucifix in the Chapel of the Holy Cross in the Cathedral dedicated to St. Martin at Lucca. A copy of the true Veronica is kept in the Cistercian Nunnery at Mont-reuil, a present of Urban IV., to this house ; his sister being nun there, 1249. Some private writers and churches have given the name of St. Veronica to the devout woman who is said to have presented this linen cloth to our divine Redeemer, but without sufficient authority.”—*Ibid.*

CORONATION OATH,

INCLUDING THAT MADE

BY HER GRACIOUS MAJESTY QUEEN VICTORIA,

June 28, A.D. 1838.

"The archbishop or bishop shall say, Will you solemnly promise and swear to govern the people of this kingdom of England, and the dominions thereto belonging, according to the statutes in parliament agreed on, and the laws and customs of the same?—*The king or queen shall say,* I solemnly promise so to do.—*Archbishop or bishop:* Will you to your power cause law and justice, in mercy, to be executed in all your judgments?—*King or queen:* I will —*Archbishop or bishop:* Will you to the utmost of your power maintain the laws of God, the true profession of the gospel, and the protestant reformed religion established by the law? And will you preserve unto the bishops and clergy of this realm, and to the churches committed to their charge, all such rights and privileges as by law do or shall appertain unto them, or any of them?—*King or queen:* ALL THIS I PROMISE TO DO.*

* THE RECOGNITION.—The Queen being seated, the Archbishop of Canterbury, accompanied by the Lord Chancellor, Lord Great Chamberlain, Lord High Constable, and Earl Marshal, preceded by the deputy Garter, made the Recognition thus:—"Sirs, I here present unto you Queen Victoria, the undoubted Queen of this Realm; wherefore, all you who are come this day to do your homage, are you willing to do the same?" The Archbishop, and the Officers of State, then made the Recognition at each side of the Theatre. The Queen, during this part of the ceremony, stood up by her

This is the form of the coronation oath, as it is now prescribed by our laws; the principal articles of which appear to be at least as ancient as the *Mirror of Justices*,* and even as the time of Bracton:† but the wording of it was changed at the Revolution, because, (as the statute alleges) the oath itself had been framed in doubtful words and expressions, with relation to ancient laws and constitutions at this time unknown.‡ How-

chair, the assembled multitude attesting their joyous loyalty by loud and enthusiastic shouts of "GOD SAVE THE QUEEN!"

THE FIRST OBLATION.—The Archbishop then proceeded to the altar, and was followed by the Queen, who, kneeling upon the cushion, made her first offering of a pall, or altar cloth of gold, which she presented to the Archbishop, who placed it on the altar. Her Majesty likewise presented an ingot of gold, which the Archbishop put into the oblation basin, imploring the acceptance of it by prayer; after which, the Queen returned to the Chair of State.—Then followed the Litany and the Communion Service.

THE SERMON.—The Bishop of London preached the sermon; the text being taken from 2nd Chronicles, xxxiv. 31. During the discourse, the right reverend prelate urged the young Queen, though now in the bloom of youth and promise, to take example from the piety of her predecessor, and by the humble and sincere discharge of her religious duties, to be prepared to meet, with calmness and resignation, that fatal hour which all men hoped to see long deferred, but which was alike inevitable, and alike uncertain in its arrival, to princes as to peasants.

At the conclusion of the sermon, the Archbishop advanced towards the Queen, and ministered to her the questions prescribed in the Coronation Service, to which she replied severally from a book of the service presented her. Her Majesty then arose, and proceeded to the altar, where she made the solemn oath. Laying her right hand upon the great Bible, tendered to her by the Archbishop, as she knelt upon the steps, she pronounced these words:—"The things which I have here before promised, I will perform and keep, so help me God!" Her Majesty then kissed the book, and set her royal sign-manual to a transcript of the Oath.—ED.

* cap. 1. s. 2.

† l. 3. tr. 1. c. 9.

‡ In the old folio abridgment of the statutes, printed by Lettoun and Machlinia in the reign of Edward iv. (penes me) there is preserved a copy of the old coronation oath; which, as the book is ex-

ever, in what form soever it be conceived, this is most indisputably a fundamental and original express contract; though doubtless the duty of protection is impliedly as much incumbent on the sovereign before coronation as after: in the same manner as allegiance to the king becomes the duty of the subject immediately on the descent of the crown, before he has taken the oath of allegiance, or whether he ever takes it at all.*

tremely scarce, I will here transcribe. Ceo est le serement que le roy jurre a soun coronement: que il gardera et meintenera lez droitez et lez franchisez de seynt eaglise grauntez auncienment dez droitez roys christiens d'Engleterre, et quil gardera toutes sez terrez honoures et dignities droiturelx et franks del coron du roialme d'Engleterre en tout maner dentier te sanz null maner damenuement, et lez droitez dispergez dilapidez ou perduz de la corone a soun poiar reappeller en launcien estate, et quil gardera le peas de seynt eaglise et al clergie et al people de bon accorde, et quil face faire en toutes sez jugementez owel et droit justice oue discretion et misericorde, et quil grauntera a tenure lez leyes et custumez du roialme, et a soun poiar lez face garder et affirmer que lez gentez du people avont faitez et estiez, et les malveys leyz et custumes de tout oustera, et ferme peas et establie al people de soun roialme en ceo garde esgardera a soun poiar: come Dieu luy aide. (Tit. sacramentum regis. fol. m. ij.) Prynne has also given us a copy of the coronation oaths of Richard ii. (Signal Loyalty, ii. 246.) Edward vi. (*ibid.* 251.) James i. and Charles i. (*ibid.* 269.)

* Blackstone's Commentaries, vol. i. 247.

MEMORANDUM.

"Liberalism," in its best points of view, is prejudice that refuses to be enlightened, ignorance that defies instruction, and self-sufficiency that perverts experience. In its worst, it is hypocrisy boasting of its candour, venality pretending to independence, and perfidy trafficking in principle. A Whig can no more comprehend the constitution than a gambler can honour the tenth commandment.—*Blackwood.*

THE OATH OF "SECRECY" OF THE JESUITS.

I, A. B., now in the presence of Almighty God, the blessed Virgin Mary, the blessed Michael the Archangel, the blessed St. John the Baptist, the holy apostles St. Peter and St. Paul, and the saints and secret host of heaven, and to you my ghostly father, do declare from my heart, *without mental reservation*, that his Holiness Pope Urban is Christ's Vicar-General, and is the true and only head of the Catholic or universal Church throughout the earth; and that by the virtue of the keys of binding and loosing given to his Holiness by my Saviour Jesus Christ, he hath power to depose heretical kings, princes, states, common-wealths, and governments, *all being illegal without his sacred confirmation*, and that they may safely be destroyed; therefore, to the utmost of my power, I shall and will defend this doctrine, and his Holiness' rights and customs, against all usurpers of the heretical (or Protestant) authority whatsoever; especially against the now pretended authority and *Church of England* and all adherents, in regard that they and she be usurpal and heretical, opposing the sacred mother Church of Rome. I do renounce and disown any allegiance as due to any heretical king, prince or state, named Protestants, or obedience to any of their inferior magistrates or officers. I do further declare, that the doctrine of the Church of England, of the Calvinists, Huguenots, and of others of the name of *Protestants*, to be damnable, and they themselves are damned, and to be damned, that will not forsake the same. I do further declare, that I will

help, assist, and advise all or any of his Holiness' agents in any place wherever I shall be, in England, Scotland, and Ireland, or in any other territory or kingdom I shall come to, and do my utmost to *extirpate the heretical Protestants' doctrine*, and to destroy all their pretended powers, regal or otherwise. I do further promise and declare, that notwithstanding *I am dispensed with to assume any religion heretical, for the propagation of the mother Church's interests*, to keep secret and private all her agents' counsels from time to time, as they intrust me, and not to divulge, directly or indirectly, by word, writing or circumstance whatsoever ; but to execute all that shall be proposed, given in charge, or discovered unto me, by you my ghostly father, or any of this sacred convent. All which, I, A. B., do swear by the blessed Trinity, and blessed Sacrament, which I am now to receive, to perform, and on my part to keep inviolably ; and do call all the heavenly and glorious host of heaven to witness these my real intentions, to keep this my oath. In testimony whereof, I take this most holy and blessed Sacrament of the Eucharist ; and witness the same further with my hand and seal, in the face of this holy convent. this day An. Dom."—*Extracted from Archbishop Usher.*

MEMORANDUM.

There is nothing so delightful, as the hearing or the speaking of truth.—For this reason, there is no conversation so agreeable as that of the man of integrity, who hears without any intention to betray, and speaks without any intention to deceive.—*Plato.*

THE OATH OF A ROMAN CATHOLIC BISHOP.

"I, N....., elect Bishop of M....., from henceforth will be faithful and obedient to St. Peter the Apostle, and to the Holy Roman Church, and to our Lord Pope, and his successors. I shall never, to their prejudice or detriment, reveal to any man the counsel they shall intrust me with, either by themselves, their nuncios, or letters. The Roman Papacy, and the Regalities of St. Peter, I will help them to keep and maintain against all men. I will take care to *conserve*, defend, increase, and promote the rights, honours, privileges, and authorities of the holy Roman Church, for our Lord the Pope and his successors. I will observe with all my power, and *make others do the same*, the rules of the Holy Fathers, the apostolic decrees, ordinations, dispositions, reservations, provisions, and mandates. I will *persecute and fight against all heretics, schismatics, and rebels to our Lord the Pope* and his successors. I shall visit personally the shrine of the apostles every third year," &c.

The reader will peruse with attention the above, and also, "The Oath of Secrecy of the Jesuits," and see if they are not in keeping with the present *movement* in this country. From whence does the invisible but progressive advance of popery and infidelity (for which "*Socialism*" is only another designation) arise, but from the *secret* workings of this *secret* body? The Jesuits are at this moment *every where* in England, yet not seen any where. Will you not exert your influence with all your power to oppose and expose the system? Believe it, they are *now* diligently working out the

very principles embodied in this awful oath; *they* are the *framers* of all that *appears* to be carried on by others for the subversion of the "Church and State;"—and will you yield, without a struggle worthy of such a cause, all that is dear to you as Protestant Christians—Britons—Freemen? No! it cannot be.

Let those, however, who have made themselves acquainted with the history of the last years of the subversion of the Romish Hierarchy in England; its political and ecclesiastical position at that eventful period; the first attacks made upon it; its struggles for existence; its final subversion; the destruction of its edifices; the alienation of its temporalities; and its present state, after the lapse of three centuries;—well consider the prophetic import of those conspicuous "signs of the times" to which we have not space enough left to draw their attention. Historical facts, it is true, ought always to be discussed with moderation, while, at the same time, there is no Protestant of any denomination, who ought not highly to prize the privileges which the remarkable struggle I have just alluded to has procured for him, and watch with jealousy any attempt, however insidious and plausible, to countenance the tenets of a system which is fraught with the most deteriorating consequences to human improvement. The venerable simplicity, transparent beauty, and divine excellence of the true catholic faith, are alike honoured and revered by all enlightened and sound conservative Protestants; who, it is humbly, but, nevertheless, *confidently* hoped, will continue to "prove all things," and to "hold fast that which is good."—ED.

MEMORANDUM.

SECRECY.—What is mine, even to my life, is her's I love; but the secret of my friend is not mine.—*Sir P. Sidney.*

THE
JURYMAN'S LEGAL HAND-BOOK,
PART III.

THE EARLY AGES.

UNDER this head, I mean to glance only at those early periods of history, which are the least serviceable to mankind, because they continue to be the least known. To rescue them from obscurity has been attempted by learned men of every age and country. To fling light upon those early ages when our remotest ancestors were wholly barbarous, and this island uncultivated, is an undertaking that shall occupy no portion of my time. I believe most, if not all the researches that have hitherto been made in this respect, have terminated in conjecture : so that we are yet in a state of uncertainty as to whence Britain was at first peopled ; from what country, or leader, or other person, it took its name. One thing, however, seems undisputed down to the present moment, which is, that the variety of opinions upon the point last spoken of, serve only to prove the utter uselessness of the whole, as irrefragable data.

For a long time, what was held to be the orthodox belief respecting the original population of the southern parts of Britain, was the story of the descent of the first Britons from the Trojans—a colony of whom was supposed, after the destruction of their native city, to have been conducted to this island by Brutus, a grandson, or great-grandson, of Æneas, more than a thousand years before the commencement of our era.

Æneas is believed to have been the great-great-grandson of Enoch, who was the seventh—some learned historians say, the ninth—generation from Noah himself. It is clear, however, that our island was called Britannia, by the Romans, long before the Cæsars were in being; or their bloody and execrable wars had been dreamt of by themselves, their sordid generals, or mercenary soldiers. They tell us, likewise, the name of “Britannia,” was originally given to it by the merchants of maritime Europe, who resorted hither periodically, in great numbers. These merchants, we are also informed by the earliest accredited historians, designated the whole of the fixed inhabitants by one common name of “Briths,” from the custom among the natives, of decorating (painting) their naked bodies with an azure blue; or, in the language of the country, “*brith*,” and which served to distinguish them from those merchants and others who came among them chiefly for commercial purposes. That the Britons were very little known to the rest of maritime or continental Europe, before the cruel wars of the perfidious Romans, seems pretty evident from various historical data which I need not adduce in this place.

It is conjectured that in process of time, very many Gauls, and others, who had thus frequented Britannia for purposes wholly connected with trade, at last became settlers in the different seaports on the coast, especially those emporiums of commerce immediately opposite the out-ports of Gaul. There can be no doubt as to the antiquity of Dover, Deal, Sandwich, and other maritime harbours in Kent; nor can there be any hesitation in pronouncing the Isle of Thanet to have been one of the first “strong holds” of the ancient Britons.

THE LAWS OF ENGLAND.

THE ancient laws, as first collated by King Alfred, and Edward the Confessor, gave rise to that collection of maxims and customs called the "common law," (*jus commune*) or *folkright*. A custom, however, to be part of our common law, must have been used "time out of mind"—"time whereof the memory of man runneth not to the contrary;" and so on.

The common law is distinguishable under three heads: "General customs," which prevail throughout the country.—"Particular customs," prevalent in districts only.—"Particular laws," used in particular courts, of general jurisdiction.

"General customs" guide the proceedings in ordinary courts of justice. Thus, the "elder son" will be declared entitled to the "freehold estate," on his father dying "intestate." Or a person who is bodily injured, can recover damages. Or he who breaks the public peace, be punished by fine or imprisonment. If doubt arise, the judges declare the law, whose decisions are recorded: these are called "Precedents." The cases thus decided, are usually printed, for the guidance and instruction of practitioners and students, and are known by the appellation of "Reports." Thus established, a matter which was before uncertain, and perhaps indifferent, becomes a "permanent rule" of law, which no judge can alter, except the former decision be "opposed to reason," or to "divine law;" for "what is not reason, is not law." And, though no man be *now* able to assign the reason for every decision made in former

ages, by the venerable administrators of the law, it has been well observed,—that, as surely as a standing rule of law, whose reason might have been not sufficiently plain, has been infringed by statutes or new resolutions, the inconveniences consequent on such innovation, have too forcibly proved the wisdom of the repealed law,—a truth (says Sir William Blackstone) which, “in these times of merciless attack on so much that our fathers held sacred, cannot be too forcibly impressed on our minds!”

I propose the following natural division: Municipal Law; or rules of state, prescribing what the community must do and abstain from. There are, therefore, two important heads,—Things to be done, and things to be abstained from; or, Rights commanded, and Wrongs prohibited. Rights I shall subdivide into two distinct heads,—Rights of “persons,” and Rights of “things.” In like manner I shall subdivide wrongs into two heads,—“private” wrongs and “public” wrongs, which last are called “crimes.”

The “rights of persons.” These rights are of two sorts—duties to be performed by individuals, and duties to be performed towards them. Of persons, also, there are two kinds; the “natural,” as created by their Creator, and the “artificial,” as created by human laws.

The rights of man, in his “natural” character, are absolute and relative, the former belonging to them as members of society, the latter as individuals only. The absolute rights of individuals, wherewith our benevolent Creator has endowed every son of Adam, may be reduced into three divisions;—personal security,—per-

sonal liberty,—and property. Of these, in order, and succinctly :—

PERSONAL SECURITY.—Personal security consists in the uninterrupted enjoyment of life, body, limbs, and health. “Life” is the immediate gift of God, and begins in legal contemplation, as soon as an infant stirs in its mother’s womb. To deprive man of this right, wilfully, is a “crime.” “Limbs,” whereby man can labour and defend and support himself, his wife and offspring, are also the gift of God ; and man is justified even in the slaughter of his antagonist, in defence of his limbs ; any wilful and lasting injury inflicted on them, is called “maihem.” The “body,” exclusively of life and the above-mentioned limbs, is also entitled to freedom from corporal insults,—as menaces, assaults, beating, wounding, &c. The “health” of a man is likewise entitled to freedom from injurious practices ; an observation which will not appear trivial, when we consider that life is of no real benefit, if by tyranny or unkind usage, our days are but labour, sorrow, and affliction.

PERSONAL LIBERTY.—Personal liberty,* I may say, consists in the power of loco-motion ; the uninterrupted freedom of which is desirable to the felicity of man, and the general good of society at large. As regards the safety of a “commonwealth” the reckless deprivation of man’s personal liberty is more perilous than to

* It is said that “Magna Charta” has been grossly violated by the arrest and imprisonment of the person for a simple debt. The question is certainly one of vast moment—Can the subject be arrested and imprisoned for a simple debt, according to the Constitution?—ED.

confiscate his property, or to deprive him of life; for these acts of intense cruelty would spread alarm; whereas a man may be privately seized and imprisoned, while his sufferings are unknown, or if known, too soon forgotten! The confinement of a person against his will, in any manner, is imprisonment; whether he be detained in a jail, a house, or even upon the street. And any liability which a man may be induced to concede to during "unlawful" imprisonment, in contemplation of law, is bad, and can be avoided; such as the payment of a draft on his banker, or of a bond given to avoid further ill-treatment and confinement, (which the law calls durities, or duress,) would be of no avail. An action of false imprisonment, also, may be safely maintained for the offence itself.

PRIVATE PROPERTY.—Individual property is the land, building, goods, chattels and effects of any kind, which belong to a person. Next to his life and personal liberty, man is entitled to the free use and disposition of all that legally belongs to him. The property of the rich, as well as the poor, must be equally protected from the forcible or fraudulent diminution of their respective stores; the welfare of the commonwealth having an essential interest in the equal protection of all the rights of each individual member of the nation, as one great family compact.

MEMORANDUM.

MIND AND BODY.—Should the body sue the mind before a court of judicature for damages, it would be found that the mind would prove to have been a ruinous tenant to the landlord.

MUNICIPAL LAW.

ENGLAND!—the birth-place of natural freedom, the cradle of commerce, the nurse of manufactures, the illustrious mother of arts and science—stands unrivalled for constitutional rights and municipal privileges.

If there be a nation on the face of this great globe, whose brave inhabitants it would ill beseem to be found unacquainted with its laws, that country—that great, mighty, and free country—is England: it being, perhaps, the only nation in which the power of doing what is lawful is attainable by all classes conforming to those “rules of conduct,” by which the noblest peers of the realm are restricted from insulting or oppressing the poorest mechanic with impunity. This is civil liberty! therefore let no man say that he is uninformed respecting it.* By civil liberty is meant a right, that is, a *lawful* use of what has been called natural freedom. Liberty, moreover, is not idleness; it is distinctly this, a free use of time to choose our labour and our exercise. Again, to be free, is not understood to mean that we should do nothing, but to be the sole arbiters of what we do, and what we leave undone. In this sense, liberty

* It is said that the Persians, in their ancient constitutions, had public schools, in which virtue was taught as a liberal art or science; and it is certainly of more consequence to a man that he is taught to govern his passions in spite of temptations, to be just in his dealings, to be temperate in his pleasures, to support himself with fortitude under his misfortunes, to behave with prudence in all his affairs, and in every circumstance of his life. I say it is of much more real advantage to him to be thus qualified, than to be a master of all the arts and sciences in the world beside.—*Franklin.*

appears to possess the active principle of real goodness. This being the case, I believe that, with the interest which every trusty Englishman has in the preservation of the laws, there rests upon him a corresponding duty to make himself acquainted with them; and particularly with those of them with which, from his relative position and circumstances, he is most concerned.

The *Trial by Jury*, whether in matters of life or property, is held to be our noblest bulwark of constitutional liberty. Most men are liable to be called upon to perform the public duty of a jurymen. Must it not then be matter of great satisfaction to themselves, and of first-rate importance to their fellow-citizens, and others, whose lives or property are at their disposal, that they should be found tolerably well read in, and familiar with, the *municipal* and *criminal* laws of their country? The law and the fact are sometimes blended: and not unfrequently juries have to decide, on oath, questions of importance, to disentangle which some legal knowledge is positively required. We know that the study of the law, in a comprehensive point of view, is not only an arduous but a difficult study. Notwithstanding appearances, however, it is a splendid science—that science which teaches to distinguish right from wrong; to maintain the former and remedy the latter; whose proper study must engage man's highest faculties—the reasonable employment of which faculties, or intellectual powers of the understanding, exercises the cardinal virtues of his heart; whose use is universal, extending to every subject, and embracing the whole community: and it is worthy of every man's attention, in whatever station of life it has pleased God to fix him.

That law is highest reason, grafted in nature, which commands what things are to be done, and prohibits the contrary, Cicero himself has clearly demonstrated. And we are in some degree prepared for the definition of that "municipal" or civil law which governs our common country. This law, then, in which we are all so personally interested, they define to be, *Rules of State, prescribing what the community must do and abstain from*. Here, as before, *law is reason*. It is rational, expedient, and just, that every man perform "social duties" to that society by whose community he enjoys corresponding privileges.

In the early ages of pastoral simplicity, time honoured patriarchs governed their roving families by the mild influences of paternal authority and filial reverence ! But as agriculture increased, societies became numerous ; and, with the first dawn of the arts and sciences, which chased from our then benighted sphere the shades of ignorance, into which man had been plunged when he fell from that state of intelligence in which he was originally made, it became needful to draw distinctions of property, and to propound offices of life which were before not contemplated. That "community" which might emanate from the individual wants and fears of many, was fast bound, enlarged, and perpetuated by the indissoluble bonds of natural affection, the lasting love of fatherland and native habits, and the unbroken links of infantile friendship. Thus arose families, communities, cities, nations. Thus he who, fleeing to Padan Aram from his brother's fury, crossed over Jordan with nothing but a staff, gave a hitherto existent and imperishable name to an illustrious, though

fallen nation, known over the whole evangelized world. The Israelites,* to whose laws, I shall frequently recur, afford a notable example of unrivalled prosperity, when their *obedience to them* corresponded with the paternal goodness of their sage Lawgiver; and an equally awful "example" do their degradation and sufferings for the last eighteen centuries, afford against our withholding from the "powers that be" that respect and obedience which are indispensable to the well-being of a kingdom, or state.

As law is highest reason, it may appear needless to observe, that not merely the letter but the spirit of these "rules of state" is to be regarded. Let me fortify my position by an illustration of the Bolognians, who had a law that whoever "drew blood in the streets" should be punished: and actually held a long debate, ere they decided that this law did not extend to the case of a surgeon who, in the street, opened the vein of a person who had fallen in a fit.

Of English Municipal Law, there are two kinds—oral and written. The former is the "common" law, consisting of general and particular customs; the latter consists of statutes only.

Judge Fortescue thinks these customs are coeval

* The Karaite Jews assert that our Saviour was a member of their community, and that he entertained the same opinions as themselves with respect to the interpolations of the rabbins; in support of which belief they adduce his repeated and violent denunciations against the rabbinical interpretations, and most positively deny that any member of their sect was in the slightest degree implicated in the crucifixion. These people likewise believe that they possess the only authentic copy of the Old Testament extant. Like the Quakers, they provide amply for their own poor, are principally engaged in commerce, and generally wealthy.

with the most ancient Britons; but other able legal writers consider that the Romans, Picts, Saxons,* Danes, and Normans, must have abrogated many, and introduced others; which perhaps led Lord Bacon to remark, that our laws are as mixed as our language, and, as our language† is so much the richer, the laws are the more complete. This may be true to a certain extent.

Alfred compiled his “*Liber Judicialis*,” or dome-book, which contained the alternating customs of different parts, for the use of the whole kingdom. The Danes introduced new customs, which certainly interfered with Alfred’s code; so that in the beginning of the eleventh century three systems of laws prevailed—

* The primary purposes of this unpretending work forbid my entering into any extensive discussion upon the Anglo-Saxon laws. I may however in this place just remark, that, with reference to British history, it is important that the enquirer should keep in mind the distinct and separate political existence of the different Anglo-Saxon states, after they became subject to the supremacy of one monarch. No opinion is more prevalent, and at the same time more entirely unfounded, than that which presupposes that the conquests of Egbert, so erroneously styled the “first sole monarch” of the English, incorporated the various states and communities of the Anglo-Saxon empire. This union we know was effected by very slow degrees. Long before the Conquest, we may discern vestiges of the earlier state of *conservative* government. That the institution of “trial by jury,” and the solemn making of oaths, were in use in England long before Duke William’s time, cannot be disputed. And, with regard to the existence of a “commonwealth,” perhaps it was not until the reign of Edw. the First, that England became one commonwealth, under the same King: and, from the federal spirit of our ancient constitution, some of its best and most important characteristics were derived.—Ed.

† PUNCTUATION.—In the olden time there was no punctuation in literary works, which is still the case in legal deeds and other instruments. Stops were first introduced in the year 1520; the colon in 1580, and the semicolon in 1599.

Mercen-Lage, West-Saxon-Lage, and Dane-Lage. The first prevailed in the midland, the second in the southern and western, and the last in the eastern counties, a very important division of the heptarchy.

Edward the Confessor made a "digest" of these three sets of laws, to be observed throughout the kingdom; a work which his grandfather Edgar began, who first built a fleet of ships, and constructed a British navy for the protection of Albion, and its commerce and merchant vessels. This was a restoration of Alfred's dome-book, with many improvements. Hence historians call Alfred the "legum Anglicanarum Condiditor," (founder of English laws,) and Edward, the "restitutor" (restorer) of them. "These are the laws," says Blackstone, "which our ancestors struggled so hardly to maintain under the first princes of the Norman line; and which subsequent princes so frequently promised to keep and restore, as the most popular act they could do, when pressed by foreign emergencies or domestic discontents. These are the laws that vigorously withstood the repeated attacks of the 'civil law;' which established in the twelfth century a new Roman empire over most of the states of the Continent; states that have lost, and perhaps upon that account, their political liberties; while the free constitution of England, perhaps upon the same account, has been rather improved than debased." Such is the case.

To proceed. Law, then, is a "rule of action prescribed by a superior to his subordinate. Thus, the Creator governs the creature; and thus the creature governs those over whom he has dominion. The "law divine" keeps in their places the fixed stars, and guides

in their prescribed orbits those revolving planets, on one of which we dwell ; distinguished as the planet, Earth.

Thus, therefore, the creature, man, is subject to the rule of action which his Maker prescribes ; and, as man's dependence on his God is absolute, so should he entirely conform to his will. This will is the "law of nature." Now man is not only endued with "principles of mobility," but with "free-will" to regulate his conduct ; wherefore on him, as a superior and responsible agent, the Creator has imposed certain "unchangeable rules" of human conduct, whereby this free-will is to be regulated ; and the faculty of reason has been granted, to enable man to discover and apprehend these rules, for good and wise purposes.

The Supreme Being who alone is the sole fountain of power, wisdom, and justice, has prescribed for the government of human conduct none other than those eternal, immutable laws of good and evil, to which He pleases to conform his own dispensations ; which to a needful extent are discoverable by man's *reason*. I name as an illustration the golden rule, "do unto others as you would they should do unto you."

The Almighty Parent has so interwoven eternal justice with individual felicity, that the latter is unattainable by him who neglects the former, whilst obedience to the former induces the latter : thereby reducing all rule to one paternal precept, "that men pursue true happiness." This rule is the basis of ethics ; this rule is coeval with mankind ; this rule always has been, is now, and will ever remain, while man—the paragon of animals—exists, the godlike and only bond of society in every country throughout the world.

But man's reason soon became corrupt, and his intelligence soon clouded with error; to remedy which Divine Providence has benignly vouchsafed, "at sundry times, and in divers manners," to deliver certain doctrines, called the "revealed" or "divine law" contained in the Bible. On these two bases, "natural" and "revealed" law, all human laws should be erected.

Mankind is necessarily divided into separate, but independent kingdoms, having national intercourse,—this is the necessary source of the law of nations, which depends on natural law or a "mutual compact." Thus I have briefly viewed the Law, "universal, natural, revealed, and national."

MEMORANDA.

IMITATION PUNISHABLE.—Five paupers were sentenced to fourteen days' hard labour at Leicester lately, for "laughing, braying, and making a noise as if they were driving cattle." Such amusements are practiced by legislators in the House of Commons with impunity.—*The Times*, No. 18,096.

FURIOUS DRIVING.—By the 1st and 2nd of Victoria, it is enacted, "that if the driver, &c. of any stage-carriage shall be convicted under this or any other Act, he shall be liable to the suspension of his licence for two months." This clause it has lately become necessary to enforce in several instances.—*Ibid.*

EQUITY LAW.

“EQUITY” may also be just glanced at and defined; as she follows closely in the law’s vestiges. *She is the searching examinatrix, the astute investigating representative of the CROWN.*

Of this dignified and comely daughter of even-handed justice, I shall say, that she, like her mother, is of heavenly origin. Equity has her courts, to which the injured resort; at whose petition she condescends to detect latent frauds and concealments; she takes cognizance of matters of trust and confidence; she delivers her conscientious suitors from the perils into which unavoidable calamity or oversight has plunged them; she grants the boon of a specific relief adapted to their several fortuitous exigencies; she throws her shield around the person and property of the adult who shall be deemed incapable of acting—*non compos mentis*; she makes a fair division between equal claimants, rendering the haste and clamour of the greedy vain; she is the widow’s friend; the benevolent guardian of fatherless innocents.

Thus, reader, have we arrived at definitive ideas of Law and Equity.

Sir William Blackstone observes, in his learned commentaries on the Laws of England, that “in most nations on the Continent, where the civil or imperial law, under different modifications, is closely interwoven with the municipal laws of the land, no gentleman, or, at least, no scholar, thinks his education is completed, till he has attended a course or two of lectures, both

upon the Institutes of Justinian and the local constitutions of his native land, under the very eminent professors that abound in their several universities. And in the northern parts of our own island, where also the "municipal laws" are frequently connected with the civil, it is difficult to meet with a person of education, who is destitute of a competent knowledge in that science which is to be the guardian of his natural rights, and the rule of his civil conduct."

Such was the language addressed by that illustrious judge to the law students, at Oxford, on the 25th of October, 1758, at the opening of a course of lectures which he there delivered. That is now more than eighty years ago; since which time a great deal of knowledge that had been locked up from the people, has been diffused. It now seems to be thought fit that all our fellow-countrymen should have a knowledge of laws in general, and of the "municipal laws" of their own country in particular. For them to know their situation—their rights and obligations, their privileges and liabilities—is desirable. I could wish to see every man, under divine direction, "sitting beneath his own vine and his own fig-tree;" dividing his "loaf" with his lawful wife, and with the children of his affection, in his own dwelling, and on his own freehold. And it is my humble opinion, that a knowledge of law, and a right apprehension of the matters above named, coupled with private and domestic virtues, (which all may exercise,) will most frequently produce this great blessing of a Supreme Intelligence; and in nearly all cases procure "comforts" to which a man would otherwise be a stranger; and make him a stranger to

many "afflictions" with which he might otherwise be intimately acquainted. This is my firm belief.

I therefore hold, that our admirable system of laws should not be neglected by all but those whose profession leads them to their study, or by merely men educated at the University; for, built upon the soundest foundations, and approved by the experience of ages, they are the birth-right of the poor as well as of the rich; and the poor are consequently interested, in common with their wealthier fellow-citizens, in some acquaintance with them. I do not say a *learned* acquaintance with them.

The reader who is acquainted with the history of ancient Rome, will not perhaps differ from me, when he remembers what the great orator, Tully, observes, "That the very boys were obliged to learn the twelve tables by heart, to imprint on their tender minds an early knowledge of the laws and constitution of their country." I am far from saying that I could wish to see every juror a lawgiver or a judge. No, but a juror ought not to be an uninstructed person.

MEMORANDUM.

An Act was passed two years since, to enable the owners of settled estates to borrow money to be expended in improvement by draining, and to charge the estate therewith, the money to be paid by equal annual instalments, not to be less than twelve nor more than eighteen years. It seems that the existence of this Act is very little known.—*Times*.

STATUTE OR WRITTEN LAW.

OUR Statute or Written Laws consist of those made by King (or Queen), Lords and Commons. The most ancient of these now extant is "Magna Charta," granted by King John, in the meadow called "Runing-mede," between Windlesore and Stanes on the 15th of June, 1255, in the seventeenth year of his reign. This was in Latin; an English translation of which is subjoined.

Statutes are "general" or "special." General or public statutes concern the whole community, and are judicially noticed in the courts, without being pleaded. Such is that which lately passed, to disfranchise "corrupt boroughs," and to extend the franchise to thousands of her Majesty's loyal subjects. Special, or private, acts, are such as affect a portion of the community only. Such would be an act whereby an unlawful marriage might be legalized, or a divorcement effected; and so on.

There are certain general rules whereby statutes are lawfully construed, when any doubt arises. Thus, in a statute passed to amend an old law, regard will be had to what the law was when the act passed; and what the mischief now was, which the legislature sought to remedy. And the business of a judge is, so to construe the act, as to suppress the mischief, and administer, if possible, the remedy.

A "penal statute" is construed strictly. Thus, the statute 14 Geo. II. cap 6, whereby it was made felony, without benefit of clergy, to steal "sheep or other cattle," was mercifully confined in its construction to the

offence of "sheep-stealing;" the words "other cattle" being too loose, where the life of a man was in jeopardy. Consequently another act was passed, namely, 15 Geo. II. cap. 34, by which the penalty imposed on "sheep-stealing" was extended to the stealing of "bulls, cows, oxen, steers, bullocks, heifers, calves, and lambs."

"Statutes against frauds" are to be liberally and beneficially expounded, where they act "against the offence," by setting aside the fraudulent transaction; but such acts are to be construed strictly, when they are "penal" against the offender himself.

Another rule is, so to construe "differing acts," or "differing parts of the same act," that the "whole may be reconciled," and suffered to stand, if possible.

Where the common law differs from a statute, the latter stands; and where a late statute is at variance with a former statute, the latter also prevails. But if there be two laws, whose substance is such that they may both consistently co-exist, the latter does not repeal the former, but they have a *concurrent* efficacy. Thus, an act of parliament which empowers a magistrate to inflict a penalty in case of an assault and battery, does not deprive a man of his right to sue for damages in the Queen's Bench, at Westminster.

If a statute which repeals a former one, be itself repealed, the original act revives and obtains force. Acts of parliament "derogatory from the power of future parliaments" are of "no force."

Acts that "cannot be carried out," or performed, are of "no validity;" and so are such parts of them as involve consequences which are manifestly foolish and opposed to reason: the judges concluding that such

consequences were not foreseen by the parliament ; and therefore they expound it, or altogether disregard it, to such equitable extent. Thus, if an act gave the lord of a manor power to try "all causes" *within* the same, yet would it be held not to comprehend a cause wherein he himself should be a party ; it being unreasonable that a man should adjudicate upon his own cause of action.

MEMORANDA.

THE NEW LAW OF WILLS.—Every will, whether of real or personal property, must be in writing, and be signed by the testator, or by some person in his presence, and by his direction. The signature by the testator must be made, or at least acknowledged, by him in the presence of two or more witnesses present at the same time, who must subscribe their names as witnesses to the execution of the will in the presence of the testator, and of each other. As the Act does not require any particular form of attestation to be used, it seems that any words of sufficient import will answer the purpose. It may be further necessary to bear in mind, that every will made in future, will be revoked by the subsequent marriage of the party making it, without the birth of a child supervening.

If we look into the mighty maze of what is called civilized society, do we not see multitudes of every grade continually sinking under mental misery, a prey to error, discord, and contention ?

No adequate security for good government can have place, but by means of, and in proportion to a community, by interest between governors and the governed.

CRIMINAL LAW.

FELONIES, "MISDEMEANOURS," &c.

A CRIME is either a public or private violation of some law; and, most frequently, signifies those offences which amount to felony.

Felony, is said to have comprised every species of crime that occasioned, at common law, the forfeiture of lands and goods, and is either capital or not capital. Capital felonies are punishable (in some particular cases) with loss of life, forfeiture of lands or goods, and, if they amount to treason or murder, to corruption of blood, so as to disqualify the felon from inheriting property or transmitting it to his posterity; but felonies not capital are punishable with transportation for a term of fifteen, ten, or seven years, or imprisonment—and to the punishment of imprisonment, whipping may be added: females are not flogged.

MISDEMEANOURS.—In general, misdemeanours denote those "indictable offences" that are under the degree of felony; as perjury, battery, libels, conspiracies, attempts and solicitations to commit felonies, and various injuries committed to property from a spirit of wantonness and a revengeful desire to injure the property of another. The punishment for misdemeanour is transportation, or fine and imprisonment, or imprisonment with hard labour, solitary confinement, or whipping.

It remains to premise who are responsible for the commission of crimes—who are principals and accessories—remedies against the hundred—the expenses

and rewards of criminal prosecution, and, lastly, the various offences cognizable by the criminal law.

THE COMMISSION OF CRIMES—AND THE RESPONSIBLE PARTY.—The guilt of offending against any public law necessarily involving a wilful disobedience, can never justly be imputed to those who are either incapable of understanding it, or of conforming themselves to it; and, therefore, neither infants under the age of discretion, idiots, lunatics, nor madmen are, *prima facie*, capable of guilt: but if it appears, that an infant, above the age of seven years, has a capacity to discern between good and evil, he shall be deemed capable of guilt, for *malitia supplet ætatem*; but the presumption shall be in favour of his innocence until he attains the age of fourteen years, at which period he is, as to the commission of crimes, supposed to have attained discretion, and his actions shall be subject to the same modes of construction as those of society at large; but within the age of seven years, an infant cannot be punished for any capital offence, whatever circumstances of a “wicked disposition” may appear; for, in presumption of law, he cannot have discretion; and against this presumption no averment can be admitted. So, also, if one who has committed a capital offence, becomes *non compos* before conviction, he shall not be arraigned; and, if after conviction, he shall not be executed; but he who is guilty of any crime through his *voluntary* drunkenness, shall be punished for it as “severely” as if he had been sober; and he who incites a madman to commit a crime is a principal offender, and as legally punishable as if he had done it himself. But a feme covert shall not suffer punishment for com-

mitting a bare theft, or burglary, or robbery, in company with, or *by coercion* of her husband: but these exceptions do not extend to "high treason," or any criminal act done by herself, alone. Persons also committing crimes by casualty or misfortune, by ignorance or mistake of fact (but not of law), by compulsion or necessity, are scarcely punishable; but all these circumstances of accident, misfortune, necessity, or infirmity, must be clearly made out by the party who relies on them for his excuse, unless they arise out of the evidence adduced against him, which sometimes is the case.

PRINCIPALS AND ACCESSARIES.—Persons committing "crimes" may be guilty either as principals or as accessaries before the fact, or as accessory only after the fact committed.

A principal is the actual perpetrator of the crime, or one who is, with his voluntary presence, aiding and abetting the fact to be done; which presence need not always be in actual immediate standing by, within sight or hearing of the fact; for there may be also a constructive presence, as where one commits a robbery or murder, and another keeps watch or guard at a convenient distance: wherever a person contributes to a felony, and no other person can be considered as a principal, he shall be so considered, unless he can prove to the satisfaction of the court that he was only an accomplice, or accessory.

An accessory is he who is not the chief actor in the offence, nor present at its performance, but is some way concerned therein, before or after the fact.

An accessory before the fact is he who, being absent

at the time of the crime committed, procures, counsels, or induces another to commit a crime ; and absence is absolutely necessary to make him an accessory ; for, if such procurer be present, in contemplation of law he is guilty of the crime as principal.

An accessory after the fact may be, where a person knowing a felony to have been committed, receives, relieves, comforts, or assists him who has actually committed the felony. And, generally, any assistance whatever given to a felon, to hinder his being apprehended, tried, or being transported, &c. makes the *assister* an accessory : as, furnishing him with a horse to make his escape, conveying instruments to him to break gaol, giving him money with which to bribe the gaoler to let him escape, &c. makes a man an accessory to the felony.

In high treason, there are no accessories, but all are principals ; so also, in petty larceny, and every crime under the degree of felony.*

By 7 Geo. IV. c. 64, accessories before the fact may be tried as such, or as "substantive felons," whether the principals have or have not been previously convicted ; and the act further provides that, accessories before or after the fact may be prosecuted after the conviction of the principal, although the principal may die, be pardoned, or otherwise delivered before the attainder, and that they may be tried in the county where they have become accessory, or otherwise in the same county where the felony was sworn to have been committed. By 7 & 8 Geo. IV. c. 29, also, accessories

* Statute 7 Geo. iv. cap. 64, and 7 & 8 Geo. iv. c. 29, especially provide for the punishment of accessories.

before the fact to any felony described in the act are punishable in the same manner as the "principal" and every accessory after the fact is to be imprisoned for any term not exceeding seven years. Receivers of stolen goods are transportable for fourteen years, if the offence amounted to felony; but if it amount only to misdemeanour, to seven years, or imprisonment for two years and whipping. Persons assisting in the commission of a misdemeanour are punishable as principals, or offenders in chief.

EXPENSES AND REWARDS CONSEQUENT OF CRIMINAL PROSECUTIONS.—By 7 Geo. IV. c. 64, the court may order the payment of the expenses of prosecutors and witnesses (whether a bill of indictment be preferred or not) who appear on recognizance or subpoena, to give evidence against any person indicted for any assault with intent to commit a felony, or for any attempt to commit felony, or for any riot, or for any misdemeanour for receiving stolen property knowing it to have been stolen; or for any assault on a peace-officer in the execution of his duty, or on any person acting in aid of such peace-officer, or for any neglect or breach of duty as a peace-officer, or for any assault committed in pursuance of any conspiracy to raise the rate of wages, or for knowingly obtaining property by false pretences, or for wilful and indecent exposure of the person, or for wilful and corrupt perjury, or subornation of perjury. And the court may grant rewards to persons who have been active in the apprehension of offenders charged with murder, burglary, arson, rape, horse-stealing, sheep-stealing, poisoning, or administering any thing to procure miscarriage. And if any person be killed in apprehending

any offender charged with any of these crimes, the court may order such compensation to be made to the wife or family of the deceased as shall appear reasonable. But no expenses are allowed for the prosecution of libels, or for assaults and offences which merely affect the Queen's subjects respectively.

OFFENCES AGAINST RELIGION AND MORALITY, &c.

APOSTACY.—Apostacy is a total renunciation of Christianity, by embracing either a false religion, or being of no religion at all ! By 9 and 10 Will. III. c. 32, if any person educated in, or having made profession of the Christian religion, shall, by writing, printing, teaching, or advised speaking, deny the Christian religion to be true, or the holy scriptures to be of divine authority, he shall, on the first offence, be rendered incapable of holding any office or place of trust ; and, for the second, be rendered incapable of bringing any action, of being guardian, executor, legatee, or purchaser of lands, and shall suffer three years' imprisonment without bail ; except he repent within four months after his first conviction, and renounce his error in open court.

HERESY.—Heresy consists not in a total denial of Christianity, but some of its " essential doctrines," publicly and obstinately avowed. By the 9 and 10 Will. III. c. 32, if any person, educated in the Christian religion, or professing the same, shall, by writing, printing, teaching, or advised speaking, deny any one of the

persons of the Holy Trinity to be God, or maintain that there are more Gods than one, he shall suffer the same penalties and incapacities as above described in the case of apostacy. But, by 53 Geo. III. c. 160, Unitarians are relieved from the penalties of this statute.

REVILING THE CHURCH.—By statutes 1 Edw. VI. cap. 1, and 1 Eliz. cap. 1, whoever reviles the sacrament of the Lord's Supper shall be punished by fine and imprisonment. And, by the second section of the latter statute, if any minister shall speak any thing in derogation of the Book of Common Prayer, he shall, if not beneficed, be imprisoned one year for the first offence, and for life for the second; and, if he be beneficed, he shall, for the first offence, be imprisoned six months, and forfeit a year's value of his benefice; for the second offence, he shall be deprived, and suffer one year's imprisonment; and, for the third, he shall in like manner be deprived, and suffer imprisonment for life. And, if any person whatever shall, in plays, songs, or other open words, speak any thing in derogation, depraving, or despising of the said book, or shall forcibly prevent the reading of it, or cause any other service to be used in its stead, he shall forfeit, for the first offence, an hundred marks; for the second, four hundred; and, for the third, all his goods and chattels, and suffer imprisonment for life.

BLASPHEMY.—Blasphemy, which consists in denying the being or providence of God, or by uttering contumelious reproaches of our Saviour Christ, or by profane scoffing at the holy scriptures, or exposing them to contempt and ridicule, is punishable with fine and imprisonment, or other corporal punishment.

PROFANE CURSING AND SWEARING.—By 19 Geo. II. c. 21, every labourer, sailor, or soldier, profanely cursing or swearing, shall forfeit one shilling for every offence, to the poor of the parish; every other person, under the degree of a gentleman, two shillings; and every gentleman, or person of superior rank, five shillings. On a second conviction, they shall forfeit double; and, for every subsequent offence, treble the sum first forfeited, with all charges of conviction; or, in default of payment, shall be sent to the house of correction for ten days. Besides this punishment for taking God's name in vain, in common discourse, it is enacted by 3 Jam. I. c. 21, that if, in any stage-play, interlude, or show, the name of the Holy Trinity, or any of the persons therein, be jestingly or profanely used, the offender shall forfeit £10, one moiety to the King, and the other to the informer.

SABBATH-BREAKING.—Sabbath-breaking, or profanation of the Lord's Day, is punishable by the Municipal Law of England. By 27 Hen. VI. c. 5, no fair or market shall be held on the principal festivals, Good Friday, or any Sunday, (except the four Sundays in harvest,) on pain of forfeiting the goods exposed to sale. And by 1 Cha. I. c. 1, there shall be no assemblies, meetings, or concourse of people out of their parishes, for any sport whatever on this day; nor shall they, in their parishes, use any bull or bear baiting, interludes, plays, or other unlawful exercises or pastimes; on pain that every offender shall pay 3s. 4d. to the poor for every offence; or, in default of payment, stand in the stocks for the space of three hours; provided that the offence be prosecuted within one month,

and that the ecclesiastical jurisdiction be not abridged by this act. Mr. Justice Blackstone is of opinion that this statute does not prohibit, but rather implicitly allows, any innocent recreation or amusement, within the respective parishes, on Sunday, after divine service is over. All contracts and sales made and entered into on Sunday are illegal and void, if made or exercised in the ordinary calling of the vender. But, by 29 Cha. II. c. 7, no person, above the age of fourteen years, is allowed to work on the Lord's Day, (works of charity and necessity only excepted,) on forfeiture of 5s. if the prosecution be commenced within ten days. Neither shall any person publicly cry or expose to sale any wares, merchandises, fruits, herbs, goods, or chattels whatever on the Lord's Day, on pain of forfeiting the same to the poor, as also of incurring the above-mentioned penalty; or, in default thereof, stand in the stocks for the space of two hours. And butchers killing or selling meat on that day forfeit 6s. 8d. 3 Cha. I. c. 2. But, by the same statute, meat in public-houses, inns, or cookshops, milk, before nine in the morning and after four in the afternoon, and, by 10 and 11 Will. III. c. 24, mackarel, before and after divine service, may be sold on a Sunday.

No drover, horse-courser, waggoner, higgler, or their servants, shall travel or come to his inn or lodging on Sunday, on forfeiture of 20s. 29 Cha. II. c. 7. Neither shall any person use, employ, or travel with any boat, wherry, lighter, or barge, without permission from a justice, under penalty of 5s. But fish-carriages may travel, either laden or returning empty, on Sundays, 2 Geo. III. c. 15. And the travelling of stage-coaches

is not illegal on Sundays, 7 B. & C. 96. By 11 and 12 Will. III. c. 21, forty watermen are permitted to ply on the Thames between Vauxhall and Limehouse on Sundays, And by 9 Anne, c. 23, licensed hackney-coachmen or their drivers, or chairmen, may ply or stand with their coaches or chairs, and drive and carry the same respectively on the Lord's day, within the limits of the bills of mortality.

By stat. 29 Cha. II. c. 7, no writ, process, warrant, &c. except in cases of treason, felony, or for breach of the peace, shall be served on a Sunday, on pain that the same shall be void; and the party serving the same shall be liable to damages. But the service of a citation on a Sunday is good, and not restrained by this act. By 13 Geo. III. c. 80, no person shall, on a Sunday or Christmas day, kill any game, or use any gun, dog, net, or engine, for that purpose, on pain of forfeiture of not less than £10 nor above £20 for the first offence, and not less than £20 nor above £30 for the second offence; or, in default of payment, be imprisoned not less than six nor more than twelve months, and at the expiration thereof, be publicly whipped. And by the 3 Geo. IV. c. 106, no master, mistress, or journeyman-baker, residing within the weekly bills of mortality and within ten miles of the Royal Exchange, or, by 1 & 2 Geo. IV. c. 50, in the country, (that is, beyond ten miles of the metropolis,) shall sell, or expose to sale any bread, rolls, or cakes; or bake any meat, pudding, pie, tart, or victuals after half-past one o'clock on the Lord's day; and no meat, pudding, pie, &c. shall be brought or taken from any bake-house during divine service, nor within a quarter of an hour of the

commencement thereof, on pain of forfeiting, for offences under 3 Geo. IV. c. 106, 10s. for the first offence, 20s. for the second, and for every subsequent offence 40s. and, for offences under 1 & 2 Geo. IV. c. 50, for the first offence 5s. for the second 10s., and for every subsequent offence 20s., provided prosecutions for the same be commenced within six calendar months from the time the offence is committed. By 21 Geo. III. c. 49, if any house, room, or place is opened on a Sunday for any public entertainment, or for debating on any subject whatever, to which persons are admitted by money or tickets, the keeper of it shall forfeit £200 for every Sunday the same shall be so used, and shall also be subject to the punishment the law directs in cases of disorderly houses; the manager or president £100; and the receiver of the money or tickets £50; and every person advertising or printing an advertisement of such a meeting, forfeit £50 for every offence. But persons exercising their calling on a Sunday are only subject to one penalty; for the whole is but one offence, or one act of exercising, though continued the whole day.

DRUNKENNESS.—Drunkenness is punished by 21 Jam. I. c. 7, with the forfeiture of five shillings, or sitting six hours in the stocks. Offenders, on commission of a second offence, may be bound in a recognizance of £10, with two sureties for good behaviour.

OPEN AND NOTORIOUS LEWDNESS.—Open or notorious lewdness is either by frequenting houses of ill-fame, which is an indictable offence; or by indecently exposing the person to public view, for which the punishment is fine and imprisonment; or the offender may,

by 5 Geo. IV. c. 83, be punished as a rogue and vagabond. The wilful exposure of obscene prints or exhibitions also subjects offenders to the like punishment. And, as the Court of Queen's Bench is the guardian of public morals, it has the superintendence of all offences against public decency and good behaviour, except those which belong to the jurisdiction of the ecclesiastical court. In that court, an information has been granted against a number of persons concerned in assigning a young girl to a gentleman under pretence of learning music, but for the purposes of prostitution! 3 Burr. 1438. And in a case where a husband had formerly assigned his wife over to another man, Lord Mansfield directed a prosecution for that transaction, as being notoriously against public decency and good manners. The disgraceful practice of buying and selling wives, and delivering them with halters round their necks, is punishable with fine and imprisonment.

By 50 Geo. III. c. 51, women convicted of having had bastard children, which may or have become chargeable to the parish, may, after the expiration of one calendar month after delivery, be confined to work in the house of correction for any space of time from six weeks to twelve calendar months.

RELIGIOUS IMPOSTURE.—Religious imposture is the pretending to an extraordinary commission from heaven; and is punishable with fine, imprisonment and whipping, 1 Hawk. P. C. 7. By the Vagrant Act, 5 Geo. IV. c. 83, persons pretending to tell fortunes, or using any device by palmistry or otherwise to deceive, are punishable as rogues and vagabonds.

It was during the reign of Geo. IV. that important changes in the administration of our criminal jurisprudence were first proposed to, and advocated in, parliament, by the present Premier. I shall record them in this place. The law of larceny, drawn from the common law and the statute law, is embodied into one act, by which, at the same time, all the statutes of former reigns bearing on the subject are repealed. In a similar manner the several laws relating to malicious mischief are repealed, and their principal provisions embodied into one act. The old law of *Voluntas reputabitur pro facto*, is revived by one clause, which makes it felony to assault, with intent to rob. The forms of administering justice, particularly in criminal cases, are now simplified. The simple plea of "Not guilty" may be recorded, and the trial proceeded in. Every peremptory challenge beyond the number of challenges allowed by law, shall henceforth be void. By the old law, those who challenged peremptorily thirty-six, were deemed to stand mute; but this provision abrogates the old law respecting standing mute. By another statute, the solemnity of passing sentence of death was to be confined to such cases only, where, by the judgment of the court, it was deemed fit to be put into execution. In other cases, where the punishment of death may be commuted, judgment of death is to be recorded. By another statute, the degrading treatment of the bodies of persons who committed *felo de se* is altered, and the coroner is directed to see that the remains of one found *felo de se* are buried privately in the night time, in the churchyard, but without the performance of any of the rites of Christian burial. By

another statute, the punishment of whipping women is abolished; and by another the old law of attainments.

For these improvements in the "criminal law," we are indebted to the Right Hon. Sir Robert Peel. Hence the Acts of Parliament on this subject have since been designated, "Peel's Acts."

THE PUNISHMENT OF CRIME IS CERTAIN.

In this country, the punishment of crime will follow the commission of it with a pace so sure, so steady, and so speedy, that the guilty can have no chance of escaping; and, whatever attempts may be made by discontented persons to subvert the government, the laws, or the religion of their country, and to establish a new order of things in their stead, they will find the law of the land too strong for them, and that the honest part of the community, the lovers of peace and order, will at all times unite themselves with the established authorities of the government, to render their attempts futile and abortive, and to put down such evil-doers with a strong hand; and I would, in conclusion, further suggest that the effectual, and only effectual, method of counteracting the attempts of wicked and designing men to undermine the principles of the lower classes, and to render them discontented with the established institutions of the country, is the diffusion of sound religious knowledge (in which there can be no excess) amongst those classes who are the most exposed to their attempts, and the educating their children in the fear of God, so that all may be taught that obedience to the law of the land, and to the government of the country, is due, not as a matter of compulsion, but of principle and conscience.—*Chief Justice Tindal, at Stafford.*

THE LAW OF TREASON.

(THE HIGHEST OF ALL CRIMES.)

THERE are, perhaps, few points on which our present and our ancient law are in more marked contrast than this. The "divinity that hedged a KING"* in former days, is faded in these latter times—power and *prestige* have changed their places, and whatever corresponding evils may have resulted from that revolution in opinion, we may at least congratulate ourselves that it has swept away from this part of our law those unjust and arbitrary principles which made the very enormity of the crime a substitute for evidence—the weight of the threatened punishment, a reason for impeding the prisoner in the prosecution of his defence. This, indeed, is a principle of judgment too deeply rooted in human nature to be expelled from the popular mind by any amount of acts of parliament. The mass of the people, who are anxious only to see some correspondence between the crime and the punishment, will adopt it, though they are happily unable to *apply* it practically, in all those cases where their own feelings are aroused, let the law denounce it as loudly and effectively as it will. But this is a trifling evil. A more real satisfaction is it to observe the care with which, in later days, the full advantages of the law have been secured to those who, however aggravated the crime of which they

* Henry the Fourth being importuned to allow the prosecution of a person who had written a libel on him, magnanimously replied, "I cannot, in conscience, do any harm to a man who tells the truth, although it may be unpalatable."—Ed.

are accused, are yet to be presumed innocent till they are proved guilty, and certainly are not in a position which requires any unnatural weight of power to be added to that which they have already arrayed against them. If we rightly interpret the RECORDER's charge, (says a leading daily journal,*) so far had this care for those involved in this kind of accusation been carried, that it was necessary to pass an act of parliament (39 and 40 George III.) to deprive even men who had made direct attempts upon the life of the SOVEREIGN, of advantages then denied to those who were under trial for an ordinary attempt to murder.

Much more, of course, has that terrible latitude of interpretation become obsolete which was formerly allowed to those most comprehensive words, as they then were, and in part are still, "compassing or imagining the death of the King." Readers of Blackstone will recollect the story, which he quotes, if we remember right, with only half its real atrocity, of the gentleman whose favourite buck had been killed in hunting by Edward IV. The poor gentleman wished its "horns and all in the belly of him that moved the King to hunt it." It turned out that the King had been his own prompter, and the unfortunate man was brought within the range of the above potent words, and *executed* for his wish. Indeed, for the honour of the law be it spoken, the then Chief Justice Markham "chose rather to leave his place than to assent to that judgment:" yet it was given, and carried into effect. Such was the law of treason as it could be enforced in

* This "paper" on the law of Treason is given, *verbatim et literatim*, from the *Times* journal.—ED.

other times by dint of the then existing machinery of military kings and pliant judges; and, indeed, a curious relic of that pliancy still remains in the latitude of signification even now forced upon that same phrase, which, in spite of the recognized principle which confines the effect of penal words within their narrowest bounds, is still held to include within itself, "conspiring to imprison the King," as what "in its consequence may tend to his death." Vague enough reasoning, certainly, and, though remaining in our text-books, not very likely to be the death of any future criminal. But, it is true law, notwithstanding—both now and heretofore.

The rules of proceeding against one who has been guilty of an unsuccessful attempt upon the life of the Sovereign, are in no respect different from those to be pursued in the prosecution of an ordinary attempt to murder. But in the "punishment" it is not so. The bare, unsuccessful, intent to murder, is in itself* no felony, yet any overt act evidencing a "compassing of the King's death," though ever so unsuccessful, is as highly penal as if it had actually deprived the country of its Sovereign.

It would, of course, be perfectly rational to hold that the law, visiting on the criminal as his own manifest sin, the result of that sin which he could not command, ought in all instances to attend merely and solely to the nature and extent of his act; and should inflict on him its full punishment, when it appeared to have been completed as far as it was in his power to complete it. In this the law would in no degree step beyond its legitimate functions. It is the *will*, the *will* alone, which

* Blackstone, iv., c. 15, note k.

deserves; it is not the outward act, but the motive of the mind which justifies punishment. And if the law does (as it does) refuse to arrogate to itself the office of punishing such mere motions of the mind, without the evidence of an overt act, it is not because such punishment would be in principle unjust, but because it would be impracticable justly to admeasure it. The difficulty, rather the impossibility, is in the application. Public justice must be administered on general rules; on tangible and ascertainable evidences. Overt acts, and nothing else, will furnish material for those general rules—will supply that tangible evidence. Therefore, and therefore only, are they the necessary conditions of punishment. But this does not apply to success—success in no way tends to furnish evidence of “superior guilt,” or failure, of comparative innocence. If a man has done all he could do, he is as criminal as if he had effected all he wished. Let us not, like children, mistake harm for guilt, but rather, by calm but determined legislation, protest against the selfish apathy which will only be roused to indignation at crime by the actual smart of evil.

Or, again, it may be argued, though we think with less of manliness or reason, that the administration of justice is but an appeal to popular sentiment, ineffective except so far as that sentiment exists; that as it cannot act without support from the moral feelings of the people, so it must be content to take its shape from those feelings; and, in the particular instance before us, that as the world at large will not recognise, realize, feel due indignation at evil which has failed of producing any mischievous result (a fact which, lamentable

or not, is plainly true,) so it will be unreal, artificial, ineffectual, nay, will bring discredit on justice itself, to attempt a mode of punishment which the popular voice refuses to acknowledge.*

* By 25th Edward iii., and also a more recent statute of 36th George iii., c. 7, it was declared to be high treason when a person imagined or compassed the death of our Lord the King; and that would equally apply to a Queen Regnant; as an addition to the construction which has been uniformly attached to a Sovereign, as laid down by Lords Coke and Hale, it has always been the custom to consider a Queen as coming within the meaning of the act, but in the 3rd year of the reign of Queen Mary, a special act was passed, giving Her Majesty all the privileges conferred by the former acts of parliament. The words of the act defined the compassing or imagining the death of the Sovereign, or any personal injury likely to cause death, as an act of treason, and, as Lord Hale justly observed, those words gave a very wide latitude, and referred, not only to the mind and will of the party, but also to the necessity that the intention should be exhibited by some act before the party could be justly accused of such an offence. It is the intention that constitutes the offence; and, although the act might prove abortive, still the intention of the party in committing the act constituted the offence. The law, therefore, required that the party accused should be attainted of some overt act, *showing an intention to do personal injury*. A later statute, the 36th George iii., cap. 27, confirmed the provisions of the previous acts of parliament, and also referred to the rules to be observed in the proceedings, and which entitled the party accused to have a copy of the indictment, and also provided that the case should be proved by two competent witnesses. It further granted that a sufficient time should be allowed for preparing the defence of the accused, and likewise entitled him to have counsel assigned to defend him. By a subsequent act of the 39th and 46th George iii. it was enacted that none of those formalities should be complied with in cases of treason *where the overt act was alleged to be a direct and personal attack upon the Sovereign*; and that when a direct attempt was made either upon the life of the Sovereign, or to do bodily injury, then the same course should be adopted, and the same trial, as if the party was charged with murder, or attempt to murder, under ordinary circumstances. The reasons for the distinction made in such a case must be obvious, because, in any ordinary case of treason, some "political object" might be inferred or suggested, but nothing of the sort could occur where the offence was a direct attack upon the life of the Sovereign.—*Ibid*—condensed.

We cannot think that the question, whether our code should aim at enforcing unbending justice, according to the evidence of guilt supplied by overt acts, or at merely furnishing an effective shape to such moral sentiments as the mass of people are capable of entertaining—we cannot think, we say, that this question is one which may wisely be left floating loosely upon our criminal code, to be determined arbitrarily in this or that way, according as this or that crime seems to require additional favour or severity at our hands. It is a principle, not a makeweight, with which we have to deal; and it deserves to be acknowledged as such. If an attempt at treason is a greater crime than an attempt at murder, let it meet with proportional severity. Let the distinction be still made, as well it may—but not by allowing in our law the co-existence of principles which are not distinct only, *but contradictory*.

MEMORANDUM.

THE INNOCENT MAN.—In a moment of anger, a virtuous king, who loved to dispense justice, was about to order the execution of an innocent man. "Great king," said the latter to him, "my suffering will end with my life; but yours is about to begin, and will never end." The king not only pardoned but rewarded him, because he had prevented him from committing a crime; and it was observed that, from that time, he never gave way to anger, for fear of offending justice. [Authority doubtful. Ed.]

PUNISHMENT OF DEATH.

THAT learned and elegant commentator, Sir W. Blackstone, says, "It is not the frequency only, or the difficulty of otherwise preventing it, that will excuse our attempting to prevent crime by a wanton effusion of human blood; for, though the end of punishment is to deter men from offending, it never can follow from thence, that it is lawful to deter them at *any rate*, and by *any means*." Again, he says, "Punishments of unreasonable severity, especially when indiscriminately inflicted, have less effect in *preventing crimes*, and *amending the manners* of a people, than such as are more merciful in general, yet properly intermixed with due distinctions of severity. A *multitude of sanguinary laws* (besides the *doubt* that may be entertained concerning the *right* of making them) do likewise prove a manifest defect either in the *wisdom* of the legislature or the *strength* of the executive power. It is a kind of 'quackery' in government, and argues a want of solid skill to apply the same universal remedy, the *ultimum supplicium* to every case of difficulty. It is, it must be owned, much *easier* to *extirpate* than to *amend* mankind; yet that magistrate (or minister) must be esteemed both a weak and cruel surgeon, who cuts off every limb, which, through ignorance, or indolence, he will not attempt to *cure*." Thus, in cases not of the most heinous and incorrigible malignity, the justly revered commentator on the laws of England considers it the duty of the legislature, not only to punish the offence upon a discriminating principle, but to adopt

such means as may be most likely to produce the amendment of the offender. The punishment of death is, for this reason, if no other, not properly applied to any crime less heinous than the highest. It cuts off all chance of amendment and of reparation. It is, indeed, an easy and compendious mode of getting rid of the offender, but not of diminishing the offence. To adapt and apportion punishments to offences, according to their different degrees of moral and social guilt, requires the exercise of great and noble faculties; but, as to *exterminate by statute*, demands no higher moral or intellectual endowments than belong to the most illiterate and least reasoning portion of mankind; it will always be in favour with those who undertake the office of making laws, without having the capacity of legislators.

All eminent writers on criminal jurisprudence coincide in opinion with the Marquis Beccaria,* that

* On the inutility of capital punishment, the following opinions will be read with interest:—

“It seems to be a very unjust thing to take away a man's life for a little money; for nothing in the world can be of equal value with a man's life. If it be said, that it is not for the money that one suffers, but for his breaking the law, I must say, extreme justice is extreme injury.”—*Sir Thomas Moore*.

“Let there be no rubrics of blood. That is the best law which gives least liberty to the arbitrage of the judge. Any over great penalty, besides the ascerbity of it, deadens the execution of the law.”—*Lord Bacon*.

“The best way to purify our criminal code from its inhuman enactments, would be ‘to burn the numerous penal statutes passed during the last three centuries.’”—*Sir Samuel Romilly*.

“The frequency of capital punishments rarely hinders the commission of a crime, but naturally and commonly prevents its detection.”—*Dr. Johnson*.

“If punishments be very severe, men are naturally led to the perpetration of other crimes to avoid the punishments due to the

crimes are "more effectually prevented by the *certainty* than the *severity* of the punishment." A statute passed in the first year of Queen Mary, has a preamble, in which this principle is beautifully expressed, and which ought to serve as a lesson to many, ambitious of the fame of legislators, even in this enlightened age. It recites, "that the state of every King consists more assuredly in the love of the subject towards his prince, than in the dread of laws made with rigorous pains; and, that laws made for the preservation of the commonwealth without great penalties, are more often *obeyed and kept*, than laws made with *extreme punishments*."

Why need I quote Montesquieu, who, in alluding to cruel punishments, observes, "Mankind must not be governed with too much severity; we ought to make a prudent use of the means which nature gives us for *their* guidance:" or, Mably, who says, "Do not suppose that capital punishment, in order to curb the passions, and produce the intended effect, must necessarily be often inflicted. If crimes deserving death are unfrequent, why multiply the penalties designed for their prevention? This very *infrequency* is the most satisfactory *proof* of the wisdom of the laws." If Mably's test be true, the "criminal code" of England can have very little connection with wisdom.

first. The countries and times most notorious for severity of punishments, were also those in which the most bloody and inhuman actions, and the most atrocious crimes were committed; for the hand of the legislature and the assassin were directed by the same spirit of ferocity; which, on the throne, dictated laws of iron to slaves and savages, and in private, instigated the subject to sacrifice one tyrant to make room for another."—*Marquis Beccaria*.

"In no countries are atrocious crimes more frequent than in those in which the punishments are most inhuman."—*Burgh*.

RIGHT OF PERSONAL LIBERTY.*

It will appear on this subject, that the rights of persons may be reduced to three primary or principal articles,—the right of personal security, the right of personal liberty, and the right of private property; and the former of these elsewhere explained, I shall

* **HEIR-LOOMS.**—The term *heir-looms* has occasioned much dispute, but the rule which is recognised appears to be this:—No chattels personal are capable of being entailed; but the law recognises a power of descent in such things as appear to be necessary to support the dignity, uphold the splendour, or continue the importance of an estate of inheritance. The word *loom* is a Saxon word signifying a *limb* or *member*; and thus heir-looms are limbs or members of the inheritance, and which generally cannot be separated from it without detracting from its value. Thus the ancient jewels of the crown are held to be heir-looms, because the loss of them would materially detract from the grandeur of the inheritance, and the dignity of the sovereign for the time being. Deer in a park, fish in a pond, charters, deeds, court rolls, and other documents necessary to verify title of estates, together with the chests in which they are kept, become heir looms, and pass with the land. Plate and other valuables presented to a peer for public services, have been held to be heir-looms, as being necessary to the dignity of the several inheritors of the honours of him by whom they were received. Such, also, is the case with things which cannot be separated from the inheritance to which they pertain; as chimney-pieces, pumps, ancient fastened tables and benches, and whatever might be considered as rational appendages to the freehold. Thus tombstones, monuments, and coat armour, hung up in a church, come under the same designation, together with any ensigns of honour which may hang with them. For, though the church be the parson's freehold, and these are annexed to the freehold, yet they were placed there by consent, for the advantage and honour of the ancestor and family of the heir, and exist therefore for his benefit. So that the parson, though he is not liable for any damage that may be done to them, which has not occurred through his special act, or those of his agents, yet he cannot take them away, without being subject to an action from the heir for trespass.—*Tyas' Hand Books; Personal Property.*

now proceed to take the right of "personal liberty" into consideration.

The right of personal liberty consists in the power of locomotion, of changing situation, or moving one's person to whatever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law. This, like the right of "personal security," is a right strictly natural, and the laws of England have never abridged it without sufficient cause; and in this kingdom it never can be abridged, at the mere discretion of the magistrate, without the explicit permission of the laws. The right of personal liberty seems to have been a privilege particularly dear to our ancestors; their struggles to acquire it, and to have it, when obtained, placed on a right footing, were numerous and praiseworthy, and their strenuous efforts to preserve it inviolate from the encroachments of tyrannical monarchs and rulers may well merit our warmest admiration.

The first distinct assertion of this right now on record, appears to be in the great charter, by which it is enacted that no freeman shall be taken or imprisoned but by the lawful judgment of his equals, or the law of the land; but we are not hence to suppose that it was this clause which laid the foundation of the right of personal liberty, or that this valuable privilege was not possessed by the subjects of these realms before the passing of the famed Magna Charta; for in all probability this clause was only declaratory of the former law on the subject, being one of the many re-enactments of the old Saxon institutions contained by that statute, and which had never been regularly re-

pealed or abolished, though they might have been disused, and have even totally fallen into oblivion in the turbulent reigns of the Conqueror and his immediate successors. In many subsequent statutes it is expressly directed, that no man shall be imprisoned unless it be by legal indictment, or the process of common law. And especially by the statute 16 Charles II. c. 10, if any person be restrained of his liberty by order or decree of any illegal court, or by command of the King's majesty in person, or by warrant of the council board, or of any of the privy-council, he shall, upon demand of his counsel, have a writ of habeas corpus to bring his body before the Court of Queen's Bench or Common Pleas, who shall determine whether the cause of his commitment be just, and thereupon do as to justice shall appertain. And, by statute 31 Charles II. c. 2, commonly called the Habeas Corpus Act, the methods of obtaining this writ are so plainly pointed out and enforced, that so long as this statute remains unimpeached, no subject of England can be long detained in prison, except in those cases in which the law requires and justifies such detainer, since he may at any time demand to be brought up before one of the superior courts, and there, in the face of the public, to have the crime or malpractice of which he is accused, and the authority by which he is abridged of his natural liberty, distinctly explained and declared to him by the judges of such court, who are invariably men of the greatest experience and most profound learning, as well as of unblemished uprightness and integrity—who have passed the greater part of their lives amidst the practice of those courts where it has now fallen upon them

to preside, and who are sworn to administer justice strictly and impartially, and according to the law of the land. And lest this statute should be evaded by demanding unreasonable bail, or sureties for the prisoner's appearance, it is declared by 1 William & Mary, st.2, c.2, that excessive bail ought not to be required. And, further, by an act of her present Majesty's reign, the 1st and 2nd Victoria, cap. 110, the personal liberty of her subjects has been still more fully secured and extended by the abolition of all imprisonment for debt on mesne process, except where fraud can be shewn.

The preservation of this personal liberty is of the greatest importance to the public, for if it once were left in the power of any, even the highest magistrate, to imprison arbitrarily whomever he or his officers thought proper (as in Russia, Austria, and some other despotic governments, is practised by the crown even to the present day) there would soon be an end of all other rights and immunities; and such an authority, even though it might be originally created and exerted for the good of the state, yet, by the weakness and indiscretion of some of those intrusted with its execution, and the unprincipled motives of others, would soon become destructive to the peace of the community, and be made subservient to private pique and personal considerations. Some have thought that unjust attacks even upon life or property, at the arbitrary will of the magistrate, are less dangerous to the commonwealth than such as are made upon the personal liberty of the subject; for to bereave a man of life, or by violence to confiscate his estate, without accusation or trial, would at once convey the alarm of tyranny throughout the

whole kingdom, and every one would conceive it his duty, as well for the avenging of those so unjustly treated as to prevent a recurrence of the same tyrannical course of proceeding for the future, to rise up and co-operate with his fellow citizens in resisting such gross and notorious acts of despotism ; but confinement of a man's person, by secretly hurrying him to gaol—where he is deprived of the means of informing his fellow subjects of his situation, and has no power of reminding them of his sufferings, which, on that account, soon slip out of memory and are forgotten—is a less public, a less striking, and therefore a more dangerous engine of arbitrary government.

But there are circumstances when the State is in real danger, in which this arbitrary confinement of a man's person, so far from being pernicious, or destructive to the common good, may be, at that particular juncture, a necessary and most advisable measure ; but so attentive is the English Constitution to the privileges and immunities of its subjects, that the right of personal liberty cannot be suspended by the magistracy or executive power alone, when the danger of the State is so great as to render this measure expedient ; for it is the parliament only, or legislative power, that, whenever it sees proper, can authorize the crown, by suspending the *habeas corpus* Act, for a short and limited time, to imprison suspected persons, without giving any reason for so doing. This is an experiment that ought only to be tried in cases of extreme emergency ; and in these the nation parts with its liberty for a while, in order to preserve it for ever. The effect of a suspension of the *habeas corpus* Act is to prevent persons

who are committed upon certain charges from being bailed, tried, or discharged, for the time of the suspension, except under the provisions of the suspending Act; leaving, however, to the magistrate or person committing, all the responsibilities attending an illegal imprisonment. It is common, therefore, to pass Acts of indemnity subsequently, for the protection of those who either could not defend themselves in an action for false imprisonment, without making improper disclosures of the information on which they acted, or who have done acts not strictly defensible at law, though justified by the necessity of the moment. Thus, in the late unhappy disturbances in Canada, it was considered expedient for the welfare and very preservation of the colony, to invest the authorities with the power of imprisoning those suspected of treasonable practices, without, at the time, publicly assigning any sufficient cause or reason to justify such imprisonment, in order that they might be more effectually enabled to quell the insurrection, and to act with that promptitude and energy which the occasion required. And, afterwards, for the purpose of relieving the magistrates and others from any liabilities they might have incurred by means of disregarding some of the minor technicalities of the law, or of acting on the spur of the moment in a manner which, perhaps, strictly speaking, could not have been justified, an indemnity Act was passed, with a retrospective effect, for curing all defects and informalities of that description already committed, though it left all subsequent omissions of the kind liable to the former penalties.

The confinement of the person in any manner what-

ever, is in law considered an imprisonment. So that the keeping a man against his will in a private house, putting him in the stocks, or arresting or forcibly detaining him in the streets, is an imprisonment. And the law so much discourages wilful confinement, that if a man is under duress of imprisonment, which has been before explained to mean a compulsion by an illegal restraint of liberty, until he seals a bond or the like, he may allege this duress and avoid the extorted bond; though if he be lawfully imprisoned, and, either to procure his discharge, or on any other fair account, seals a bond or deed, this is not by duress of imprisonment, and he is not at liberty to avoid it. To make imprisonment lawful, it must either be by process from the courts of judicature, or by warrant from some legal officer having authority to commit to prison, which warrant must be in writing, under the hand and seal of the magistrate, and express the causes of the commitment, in order to be examined into (if necessary) upon a *habeas corpus*; and if there be no cause expressed, the gaoler is not bound to detain the prisoner.

A natural and regular consequence of this personal liberty is, that every Englishman may claim a right to abide in his own country so long as he pleases, and not be driven from it unless by the sentence of the law. On the other hand, indeed, the King, by his royal prerogative, may issue out his writ of *ne exeat regno*, and prohibit any of his subjects from leaving the kingdom without license; for this may be necessary as well for the public service and safeguard of the community, as to prevent such fraudulent persons, against whom, by the special circumstances of the case, there may chance

to be no remedy *at law* from leaving the realm, and thus defrauding those having just and *equitable* claims upon them. But no power on earth, except the authority of parliament, can send any subject of England out of the land against his will, not even a criminal; for exile and transportation are punishments unknown to the common law; and whenever the latter is now inflicted it is either by the choice of the criminal himself to escape a capital punishment, or by the express direction of some modern act of parliament. To this purpose the great Charter declares, that no freeman shall be banished, unless by the judgment of his peers and the law of the land. And by the Habeas Corpus Act before mentioned, no subject of this realm shall be sent beyond the seas or committed to prison contrary to law; and the person offending against this act, besides incurring certain penalties, shall be incapable of receiving the King's pardon, and also be liable to an action at the suit of the person aggrieved, in which treble costs shall be recovered against him, besides damages which no jury shall assess at less than £500.

The law is, in this respect, so benignly and liberally construed for the benefit of the subject, that though *within* the realm the King may command the attendance and service of all his liegemen, yet he cannot send any man *out* of the realm, even upon the public service, excepting sailors and soldiers, the nature of whose employment necessarily implies an exception; he cannot even constitute a man Lord Deputy or Lieutenant of Ireland, against his will, nor make him a foreign ambassador; for this might, in reality, be no more than an honourable exile.

PROCEEDINGS IN CIVIL* ACTIONS.

THE nature and several species of the courts of justice, wherein remedies are administered for private wrongs, are sufficiently well known; and, under the jurisdiction of one or other of those courts, almost every description of wrong may be tried;—the nature and locality of the injury, determining the process an individual ought to adopt, and the tribunal to which he ought to apply for the redress of his grievances. It will be sufficient here to examine the manner in which these several remedies are pursued and applied by action in the courts of common law.

* FRIVOLOUS SUITS.—The following is Lord Denman's bill, presented to the House of Lords, "to repeal so much of an act of the 43rd of Elizabeth, intituled 'An act to avoid trifling and frivolous suits in law in Her Majesty's Courts at Westminster;' and of an act of the 22nd and 23rd of Charles II., intituled 'An act for laying impositions on proceedings at law, as relates to costs on personal actions;' and to make further provisions in lieu thereof."

The preamble sets forth that—

"1. Whereas an act passed in the 43rd year of the reign of Elizabeth, intituled, 'An Act to avoid trifling and frivolous Suits in Law in Her Majesty's Courts at Westminster;' and another act in the 22nd and 23rd years of the reign of King Charles II., intituled 'An Act for laying imposition on Proceeding of Law,' which recites that many good subjects of this realm have been and daily are undone by such suits, contrary to the intention of the said statute of Queen Elizabeth; but the same evil, notwithstanding, doth still prevail and increase; and it is expedient to consolidate and extend those provisions. Now, be it enacted by the Queen's most excellent Majesty, by, &c., That the two said recited acts of the 43rd of Elizabeth, and of the 22nd and 23rd of Charles II., so far as the same relate to costs in personal actions, be, and they are hereby repealed.

"2. That if the plaintiff in any action of trespass, either to the person or to real or personal property, or for libel, slander, or malicious prosecutions, brought or to be brought in any of Her

Injuries, of whatsoever nature they may be, and whether affecting a man's liberty, security, reputation, or property, are divisible into two kinds, viz., civil and criminal injuries. Civil injuries are such private wrongs as only affect the interest of particular individuals, without having any very hurtful or pernicious effects on the community at large; but public or criminal injuries, which fall under the graver denomination of crimes and misdemeanours, are those by the commission of which it is not the injured person alone who suffers, but the very peace and well-being of society are materially endangered by such greater delinquencies.

The remedy for a civil or private injury is by action, in which an individual seeks compensation for some injustice he has sustained in his reputation, person, or property;* the remedy for a public or criminal wrong is by indictment, in which the object sought is not com-

Majesty's courts at Westminster, shall recover by the verdict of a jury less damages than 40s., such plaintiff shall not be entitled to recover or obtain from the defendant, in respect of such verdict, any costs whatever, whether it shall be given upon any issue or issues tried, or judgment shall have passed by default, unless the judge or presiding officer before whom such verdict shall be obtained, shall immediately afterwards certify on the back of the record (if the action be in trespass) that the action was really brought to try a right, besides the mere right to recover damages for the trespass or grievance for which the action shall have been brought."—*The Jurist*.

* The laws between debtor and creditor have begotten a false confidence—a false confidence has begotten a false credit—a false credit has begotten a false and bloated bubble of a trade which, for every one which it enriches, ruins a hundred, and entails upon them the miseries of disappointed hope and degraded pride. They have begotten a false wealth to the many, as well as a real wealth to the few—false tastes, false desires, false necessities, false pride, false notions of respectability, false hopes, false crimes, false punishments, false notions of happiness, and nothing real, but human misery. [Authority doubtful. Ed.]

pensation to the sufferer, but the punishment of the offender. The former is at the risk and suit of an individual, the latter at the suit of the crown, as the chief magistrate and general conservator of the public safety. It is evident that there must be considerable difference in the methods of proceeding to obtain redress for these two species of wrongs, and that more immediate and decisive steps must be taken, and less regard paid to the mere preliminary steps of the prosecution, in indicting a man for a crime or misdemeanour, than in proceeding against him at the suit of a private person for the recovery of some alleged debt, or to obtain compensation for the obstruction of a personal and private right. In the former instance, the public generally are interested in the transaction, it being essential to the common welfare that all disturbances and offences tending to interfere with the peace of society should be speedily and effectually repressed; in the generality of cases, too, there is nothing in the offence itself which can possibly need much investigation or delay, the only circumstance necessary to be shown, in usual instances, being, first, that the act is an unlawful one, and, next, that the party charged was of his own free will the actual perpetrator. But in other suits it is otherwise; private transactions between party and party are then most frequently the subject of dispute, and consequently a greater number of preliminary stages in the action have to be gone through, before it can be discovered what really are the true points at issue between the parties; and more lengthened investigations into the matter have also to take place, not only in the courts of justice, but even long before the

cause is sufficiently ripe for a hearing and judicial decision. And these, with other circumstances which it would be tedious as well as useless to enumerate, render the mode of procedure in civil suits of rather a more intricate nature with regard to the pleadings, &c. than in public and criminal prosecutions.

I will now proceed to consider and give an account of the mode of proceeding in and prosecuting a suit in the Court of Common Pleas at Westminster,* (which differs but little from the Courts of Queen's Bench and Exchequer,) that being the court originally instituted for the prosecution of all civil actions, and most of the inferior common law jurisdictions conforming, as near as may be, to the example of the superior tribunals to

* It may be advisable to say something of the periods of the year, in which the superior courts at Westminster Hall sit for the administration of justice. These are four in number—Hilary, Easter, Trinity, and Michaelmas terms. Hilary term begins on the 11th, and ends on the 31st of January. Easter term begins on the 15th of April, and ends on the 8th of May. Trinity term begins on the 22nd of May, and ends on the 12th of June; and Midsummer term begins on the 2nd and ends on the 25th of November; but where the day of the month on which any term is to end falls on a Sunday, the following Monday is considered the last day of the term. The spaces between the terms are called the vacations. It is in the vacations after Hilary and Trinity terms that the judges make their circuits into the different counties for the purpose of holding the courts of assize. Formerly actions could not be effectually prosecuted till the vacation was over, and the succeeding term had commenced, but now all necessary proceedings to judgment and execution may be had upon any writ, &c., whether served in term or vacation, after eight days from the service or execution thereof, except the last of such eight days shall happen to be between the Thursday before and the Wednesday after Easter day, or between the 10th of August and the 24th of October. And if the last of such eight days shall happen to fall upon a Sunday, Christmas day, or any day appointed for a public fast or thanksgiving, the eight days shall not be considered to have elapsed till the day following.

which their causes may probably be in some stage or other removed.* It is true, indeed, that many of the courts which have been already described, differ very essentially as to their practice in various points; but as an attempt to explain the forms observed in each, besides being a task of some difficulty, would only tend to perplex and confuse the general reader, I shall confine myself to the course just adverted to; and, my object being only, as has been more than once remarked, to diffuse some *general* information on the subject of our legal institutions, it may be observed that the minutiae and dry detail of a law-suit will not be entered into, but merely a shortened and abridged account of the practice given.

The person who commences an action, it need scarcely be premised, is termed the plaintiff, and he against whom it is brought, the defendant. Previous to the commencement of the action, the most usual and straightforward course of proceeding is, for the attorney of the plaintiff to write a letter to the defendant, acquainting him with the nature of the demand which his client has against him, and adding, that if some satisfactory arrangement be not entered into within a given time, legal proceedings will be instituted without any further notice. This letter is not by any means a necessary preliminary in the action, but it is nevertheless a mark of courteous behaviour on the part of the plaintiff, which should not be omitted, except under

LAW.—A month in law is a lunar month of twenty-eight days, unless otherwise expressed; therefore a lease for twelve months is only forty-eight weeks; but a lease for a twelvemonth is good for the whole year.

peculiar circumstances, as it gives the defendant an opportunity, by satisfying the claim made upon him, of avoiding the expense which would otherwise be incurred at the commencement of the action. If this intimation produces no satisfactory result, the action is begun by issuing a writ of summons, which is a judicial mandate proceeding out of the court in which the action is brought, directed to the defendant, and commanding him, within eight days after service of the writ, to enter an appearance in the court, or, in default of his doing so, the plaintiff will proceed to judgment and execution; thus giving him the opportunity of defending the action, should he choose to do so; but the plaintiff still having the power, after satisfactory evidence of the writ having been served upon the defendant, of proceeding alone through the ulterior stages of the suit. It is strictly necessary, however, that a copy of this writ should be delivered to the defendant in person, that he may both be aware of the institution of legal proceedings against him, and so have an opportunity of resisting them, if he has any sufficient grounds of defence, and also that he may have full knowledge of the consequences most likely to ensue, in case of his disregarding the summons. But this rule is sometimes relaxed in cases where a strict observance of it would tend to deprive the plaintiff of his remedy by action altogether. Thus where a man having reason to suspect that a creditor is about to sue him for a debt, keeps out of the way, or gives instructions for the plaintiff's agents, &c., to be denied access to his house, for the express purpose of preventing personal service of the writ of summons being effected upon him; on an affi-

davit of these circumstances being made, the court out of which the first writ was issued, will also grant another process, termed a writ of *distringas*, by which the plaintiff is enabled to seize the defendant's goods to the value of 40s., and if that is found insufficient to make him put in an appearance; proceedings to outlawry may thereupon be had. If also there is any reasonable ground to suspect that the defendant is about to leave the kingdom, with the design of eluding the vigilance of his creditors, and the debt or cause of action amounts to £200 or upwards, on an affidavit of these circumstances being made by the plaintiff, or some one on his behalf, a *capias* will be issued on a judge's order (and which will continue in force for one calendar month after its date,) directed to the sheriff of the county, and requiring him to arrest the defendant, and to detain him until he shall have put in substantial securities for his appearance, which is called finding bail, or until he shall have deposited the amount of the plaintiff's claim in the hands of the sheriff, together with £10, to cover the costs already incurred. Under the old law, before it was altered by the act for the abolition of arrest on mesne process, allailable actions for £20 or upwards might have been begun in this manner, but now, except in the case above alluded to, and (except also where the defendant is a member of parliament, or is already a prisoner at the suit of some other person, in both of which cases there is some difference in the process,) they must commence in the manner already pointed out.

When the defendant intends to resist the plaintiff's claim, he gives his attorney instructions to that effect,

who thereupon within eight days after service of the writ, enters an appearance (that is, leaves a memorandum in writing to the effect, that the defendant appears by his attorney in the action,) with the proper officer of the court, and by so doing, he recognizes its jurisdiction, and both plaintiff and defendant are then said to be *in court*, and are ready to commence the legal conflict. The next step is the pleadings, or mutual statements, in legal form, of the facts which constitute the plaintiff's cause of action, or the defendant's ground of defence; these were formerly made *viva voce* by counsel in open court, but are now delivered to the proper officer in writing. They commence with what is termed the declaration, which is delivered by the plaintiff to the opposite party, and consists of a formal written statement of the cause of action or ground of complaint, with the title of the court in which it is brought, and the county or *venue* in which it is to be tried. This is followed by notice to the defendant to plead, or put in his answer, which he must do within a certain given time, though that time may generally be enlarged on application to a judge. The defendant in the next place puts in his excuse or plea, which may be of various kinds, either denying the validity of the claim, the amount of the demand, or the ability of the plaintiff to bring the action; or it may allege that the plaintiff not having prosecuted his claim within the time that certain statutes, called the "statutes of limitation," enacted for the purpose of preventing persons from raising up old unsatisfied or forgotten demands, have allowed for bringing an action after the cause of it has accrued; is by such neglect for ever barred of his remedy. Should

the plaintiff flatly and positively deny the defendant's plea or excuse, the matter is said to be at issue between them. An issue upon matter of law, called a demurrer, is where the statement of facts is admitted, but it is denied that the law arising upon those facts is such as is stated by the opposite party, and this point is determined upon by the judges after hearing argument by counsel on both sides.

But on an issue of fact, that is, where the statement of facts submitted by one party is denied by the other, the matter has to be solemnly investigated before a jury, by the questioning of witnesses, and whatever other evidence can be adduced to establish the truth. This examination of facts is properly the *trial by jury*, to which the preceding stages of a law-suit are only preliminary steps. Supposing then the facts to be denied, or put in issue, due notice of trial is next given, the briefs are prepared, instructions given to counsel, and the record delivered to the proper officer, and the matter is then ready to come before the court. After the jury are sworn, the pleadings are opened to them by the counsel for the plaintiff, who states the nature of the action, and the evidence intended to be produced in its support. When the evidence of the plaintiff is gone through, the counsel for the defendant states his case, and supports it by evidence; and the party who began is heard in reply, if witnesses have been called by the defendant in support of his case, otherwise no reply is allowed to plaintiff's counsel. Both sides having finished, the judge sums up the whole case to the jury, carefully divesting it of any superfluous circumstances which the eloquence of counsel may have im-

pressed upon the jurymen's minds, acquainting them where the true point of the matter lies, and adding such other remarks for their guidance as he may deem expedient, both in relation to the evidence, which he also thoroughly examines, and the matters of law arising therefrom. Next follows the verdict, which must be unanimously agreed to by the jury, and delivered publicly in open court. After the verdict, comes the judgment of the court, which cannot, however, be issued till the next term after the trial, and then notice must first be given to the other party; for, in cases where there has been any defect in the trial, or improper behaviour of the jury among themselves, or of the plaintiff towards them, by which their verdict was influenced, and exorbitant damages given, or in cases where there has been any misdirection of the judges, the judgment may be suspended or arrested, and a new trial will be granted. Between the judgment and execution, an appeal may be made to a superior court, on the ground of some injustice or irregularity in the antecedent proceedings;—the order in which a cause may be removed, on appeal, from an inferior court to a higher jurisdiction, has already been shown.

If the judgment is not suspended or reversed, the next and last stage in the proceedings of a suit is the execution, or putting the sentence of the law into force. Execution is of various kinds; if land or real property be the subject of dispute, and the plaintiff obtain a verdict whereby the possession of it is awarded to him, a writ is directed to the sheriff, commanding him to give actual possession to the plaintiff; and the sheriff may justify breaking open doors, if the possession is

not peaceably yielded ; but if quietly given up, the delivery of a twig or turf, or the ring of the door, in the form of putting in possession, is sufficient. Execution in actions where money only is recovered, may be entered either against the body of the defendant, whereby he is arrested and put in prison, or against his goods and chattels, which are thereupon sold, and the proceeds applied towards satisfying the damages and costs of the action ; or else it may be both against his body, lands, and goods ; so that the plaintiff, when judgment has been delivered in his favour, is seldom at a loss how to enforce it. The costs of the action or suit are for the most part paid by the losing party, except in a few instances, privileged by statute or prescription.* The Queen, except under some modern statutes, neither pays nor receives costs, consequently, in cases where the crown is concerned, the opposite party, whether successful or unsuccessful, pays his own costs, and those only. Persons who will swear that they are not possessed of £5, except their wearing apparel and the subject of the suit, may have writs and subpoenas gratis, and counsel and attorney assigned them without fee, which is termed suing *in formâ pauperis*, and are excused from paying costs when plaintiffs, but shall suffer such other punishment as the court may direct. The prosecutor in any action for pecuniary penalties is not entitled to costs, unless expressly given by statute ; and, to prevent trifling actions for assault, battery, and

* In the Court of Chancery on the 22nd Dec. 1837, the Lord Chancellor decided on an appeal from the Vice-Chancellor, that a Solicitor has no right to withhold the papers of his client when the latter employs another Solicitor, and that the Solicitor has no lien on the papers for his costs.

trespass, where the jury gives less damages than 40s. the plaintiff is allowed no costs, unless the judge certify that an assault or actual battery has been proved, or that the trespass was wilful and malicious. In actions for slander, no sum under 40s. ever carries costs, and the defendant having justified or not, makes no difference, and there is no certificate grantable for either party; but in actions for libel, crim. con., seduction, debt, contract, or consequential damage, the smallest damages carry full costs, unless the judge certifies in favour of the defendant, which deprives the plaintiff of his costs.

MEMORANDA.

"The Romans, under Cæsar's government, not only had a law to prevent creditors from throwing their debtors into gaol, (on giving up two parts of their revenue,) but actually appointed certain officers, whose business it was to pay the debts of really poor men out of the public revenue. Had there been no law between debtor and creditor, it is true that we should have been a less wealthy, but a far happier people. We should have been a less numerous people, a less overtasked people, a less cultivated and less refined people, a more ill-dressed and more ill-mannered people, a less manufacturing people, a more agricultural people, a less diseased, a less suicidal, a less maimed, crippled, and mutilated people—A MORE CONTENTED PEOPLE." * * *

IMPORTANT TO PARISH OFFICERS.—In the case of *Sewell, v. Nixon and Barnes*, argued before the judges in Queen's Bench, the court held that "one overseer cannot bind another without his consent or authority."

be taken away by him before the expiration of his term. A tenant may, by the general rules of husbandry, carry away straw or hay from the premises: but a tenant must manage and cultivate a farm in a husband-like manner, and according to the custom of the country there used. A landlord in an action against his tenant, for the mismanagement of a farm, set forth a precise custom as to the mode of cultivation: the jury found that the custom was not as the landlord alleged, and the landlord did not recover damages in that action, but a new trial was granted. Where an outgoing tenant does the necessary ploughing, and sows the land in the ordinary and proper course of husbandry, and leaves manure for the benefit of the landlord, which is accepted and taken by him, the law will imply and enforce a promise on the part of the landlord, to pay the tenant the value. The property in trees, is in the landlord; the property in bushes, is in the tenant. A tenant from year to year, is not bound to do substantial repairs. When the tenancy is determined by notice to quit, and the rent does not exceed twenty pounds a year, the landlord may speedily recover possession by a proper application to the magistrates of the district. A distress cannot be made upon goods removed to avoid distress, unless rent was due at the time of the removal; and a landlord has no right to follow and take under a distress for rent, the goods of a lodger which have been taken off the premises, but only those of his own immediate tenant.

A mill of wood placed on brick-work, and a staddle barn of wood erected on blocks of stone, are not fixtures to which the landlord is entitled.

THE LAW OF REPAIRS.

(Between Landlord and Tenant.)

LESSEES are bound to repair their tenements, except it be mentioned in the lease to the contrary. Though a lessee for years is not compellable to repair the house let to him, which is burnt by accident, if there be not a special covenant in the lease that he shall leave the house in good repair at the end of the term; yet if the house be burnt by "negligence," the lessee shall repair the same, although there be *no such covenant*. A lessee who covenants to pay rent and to repair, with an exception of casualties by fire, is liable upon the covenant for rent, though the premises are burnt down, and not rebuilt by the lessor after notice; but in that case the tenant will be relieved in equity when the landlord recovers against the insurer. Neither is a landlord liable to an action for not repairing, if he had not expressly agreed to repair. But the tenant, or lessee, will, in some cases, be at liberty to quit *without notice*, and will be exempt from future rent, if the house, together with the appurtenances, become uninhabitable, or there be no sufficient beneficial occupation, arising out of the landlord's default in repairing, &c.

A person who takes premises on lease, is bound to do all kinds of needful reparations, and to keep the premises in repair during his term, even though he did not agree to do so.

The true principle is this: In the absence of a *bona fide* undertaking to do so, a tenant from year to year is not bound to make GENERAL, nor, indeed, lasting re-

pairs, such as replacing an old by a new roof, to a falling house. The lessee or tenant, is only understood in law to be liable to make what are called tenantable repairs, such as putting in a door or a window displaced during his tenancy. In the event of voluntary negligence, however, the tenant from year to year, is *liable* to repair what has been destroyed through such neglect. There is another instance. A tenant from year to year is liable, if he neglects to adopt such precautionary means to obviate, at a small expense, the occurrence of considerable damage or injury to the premises. For example, if a skylight were accidentally broken, it is plain that the tenant would be liable if he did not repair it, provided the consequence of such neglect, on the part of the tenant or lessee, would be a real injury to the lessor's or landlord's premises, from *wet, &c.*

But where a tenant or lessee occupies premises, and pays rent under a lease for years, void by the Statute of Frauds, he becomes liable to repair such premises according to the covenants contained in the lease. This being so, the law of England presumes in favour of the tenant's compliance until the contrary be shown, &c.—*Consult, on this subject, Chitty on Contracts, and Coote or Harrison.*

MEMORANDUM.

UNSTAMPED LETTERS CANNOT BE READ AS "EVIDENCE," IN COURTS OF LAW.—The postage-stamp attached to an envelope in which a letter is merely enclosed, will not qualify that letter to be read as "Evidence" in a court of law; the postage-stamp being required to be attached to the letter or correspondence itself.

MAGNA CHARTA,*

OR THE GREAT CHARTER OF THE LIBERTIES OF
ENGLISHMEN.

[Translated from the original, preserved in the archives of Lincoln Cathedral.]

JOHN, by the Grace of God, King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Earl of Anjou, to his Archbishops, Bishops,† Abbots, Earls, Barons, Justiciaries, Foresters, Sheriffs, Governors, Officers, and to all Bailiffs, and his faithful subjects,—Greeting. Know ye, that We, in the presence of God, and for the salvation of our own soul, and of the souls of all our ancestors, and of our heirs, to the honour of

* PRESERVATION OF MAGNA CHARTA.—Sir R. Cotton, while collecting his literary treasures, being one day at his tailor's, discovered that the man held in his hand, ready to be cut up for measures, the original Magna Charta, with all its appendages of seals and signatures. He bought this singular curiosity for a trifle, and recovered in this manner what had long been given over for lost.—*Note to Pepys' Journal*.—ED.

† BISHOPS—Their translation first instituted, 239; were appointed by the people, 400; first in England, 694; first in Denmark, 939; made barons, 1072; precedence settled, 1075; banished England, 1208; consented to be tributary to Rome, 1245; deprived of the privilege of sitting as judges in capital offences, 1388; the first that suffered death in England by the sentence of the civil power, 1405; six new ones instituted, 1530; elected by the King's *Conge d'Elire*, 1535; held their sees during pleasure, 1547; form of consecration ordained, 1549; seven deprived for being married, 1554; several burnt for not changing their religion, 1555; fifteen consecrated at Lambeth, 1569; expelled Scotland, 1689; twelve impeached, and committed for protesting against any law passed in the house of Lords during the time the populace prevented their attending parliament, 1641; their whole order abolished by parliament, Oct. 9, 1646; nine restored and eight new ones consecrated, Oct. 25, 1660; regained their seats in the House of Peers, Nov. 30, 1661; seven committed to the Tower, for not ordering the King's declaration for liberty of conscience to be read throughout their dioceses, 1688; six suspended for not taking the oaths to King William, 1689; derived, 1690.

God, and the exaltation of the Holy Church* and amendment of our kingdom, by the counsel of our venerable fathers, Stephen Archbishop of Canterbury, Primate of all England, and Cardinal of the holy Roman Church, Henry Archbishop of Dublin, William of London, Peter of Winchester, Joceline of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, and Benedict of Rochester, Bishops; Master Pandulph, our Lord the Pope's Sub-deacon and familiar; Brother Almeric, Master of the Knights-Templars in England; and of these noble

* Christianity was introduced into "ancient Britain" at a very early period. The island was invaded by Julius Cæsar 54 years before the birth of Christ, and it was finally subdued by Claudius Cæsar, in the year of our Lord 52; when the British King Caractacus and his father Bran were carried captives to Rome. It is said that in the imperial city Bran became a Christian, and that on his return to Britain, he caused his countrymen to be instructed in the true faith. St. Paul did not write his Epistle to the Romans (in which he says their faith was spoken of throughout the whole world) till eight years after Caractacus was taken prisoner; but as the "strangers of Rome," who listened to the preaching of St. Peter, at Jerusalem (Acts ii. 10), probably carried home to their city the glad tidings of the gospel, many might there be found anxious to convert the father of the British King. There is reason to suppose that "Claudia" (2 Tim. iv. 21.) was a British lady, probably an attendant on the Queen of Caractacus, as Pudens, whom St. Paul mentions in connection with her, is known to have married a native of Britain bearing that name. Nero was the first Roman Emperor who persecuted the Christians; they began to suffer from his cruelty two years after St. Paul had appealed to him, when accused to Festus by the Jews (Acts xxv. 11).

St. Paul himself indubitably preached the Gospel of Christ in Britain about the 14th year of the reign of that Emperor, and A.D. 68. St. Paul appointed Aristobulus, mentioned in the Epistle to the Romans as the first bishop, and established a complete episcopal form of Church Government. The Church of Britain, thus established, was senior to that of Rome; Linus, the first bishop of the latter, being appointed by the joint authority of Peter and Paul, in the year of their martyrdom, after his return from Britain. The Church in Britain continued to be governed by its own bishops six hun-

persons, William Mareschal Earl of Pembroke, William Earl of Salisbury, William Earl of Warren, William Earl of Arundel, Alan de Galloway, Constable of Scotland; Warin Fitz-Gerald, Hubert de Burgh, Seneschal of Poictou, Peter Fitz-Herbert, Hugh de Nevil, Matthew Fitz-Herbert, Thomas Basset, Alan Basset, Philip de Albiniaac, Robert de Roppel, John Mareschal, John Fitz-Hugh, and others our liegemen; have in the First place granted to God, and by this our present Charter, have confirmed, for us and our heirs for ever:—(I.) That the English Church shall be free,

dred years, independent of any foreign Church, and was found in that state by Austin, the Pope's first missionary; at which time they had both schools and churches, and a learned clergy, and were in a flourishing state, and utterly refused subjection to the Pope or his emissaries. Further, the British Church was the first Protestant Church in the world, having so early as the seventh century, and 900 years before Luther, strongly protested against the errors of the Church of Rome, and refused to hold communion with that church. Their simplicity and purity of worship was such that they would not sit even at the same table, nor lodge under the same roof, with the followers of Austin, on account of their superstitious and idolatrous ceremonies.

In less than 300 years after the death of Christ, his people had endured no less than ten violent persecutions. The tenth, and last, was the only one which reached Britain. The first British martyr was St. Alban, who, while yet a heathen, influenced merely by compassion, concealed in his house a Christian priest, by whom he was led to receive the truth. The persecutors having traced the object of their search to his retreat, Alban put on the hair cassock of his teacher, and was carried in his stead before the Roman governor, while the priest escaped. Declining either to betray his friend, or to sacrifice to the Roman gods, the new convert was condemned to death; and the firmness and meekness of his demeanour so touched the heart of the heathen soldier appointed to be his executioner, that he refused to stain himself with the crime, and declared he felt convinced of the truth of Christianity. He suffered martyrdom with Alban, on the spot where the Abbey of St. Alban's now stands, which was afterwards dedicated to the memory of the Saint.

and shall have her whole rights and her liberties inviolable; and we will this to be observed in such a manner, that it may appear from thence, that the freedom of elections, which was reputed most requisite to the English Church,* which we granted, and by our Charter confirmed, and obtained the confirmation of the same from our Lord Pope Innocent the Third, before the rupture between us and our Barons, was of our own free will: which Charter we shall observe, and we will

* THE CHURCH.—Manifold as are the blessings for which Englishmen are beholden to the institutions of their country, there is no part of those institutions from which they derive more important advantages than from its Church establishment: none by which the temporal condition of all ranks has been so materially improved. So many of our countrymen would not be ungrateful for these benefits, if they knew how numerous and how great they are, how dearly they were prized by our forefathers, and at how dear a price they were purchased for our inheritance; by what religious exertion, what heroic devotion, what precious lives consumed in pious labours, wasted away in dungeons, or offered up amid the flames. This is a knowledge which, if early inculcated, might arm the young heart against the pestilent errors of these distempered times. I offer, therefore, to those who regard with love and reverence the religion which they have received from their fathers, a brief but comprehensive record, diligently, faithfully, and conscientiously composed, which they may put into the hands of their children. Herein it will be seen from what heathenish delusions and inhuman rites, the inhabitants of this island have been delivered by the Christian faith; in what manner, the best interests of the country were advanced by the clergy even during the darkest ages of papal domination; the errors and crimes of the Romish Church; and how, when its corruptions were at the worst, the daybreak of the Reformation appeared among us; the progress of that Reformation through evil and through good; the establishment of a Church pure in its doctrines, irreproachable in its order, beautiful in its forms; and the conduct of that Church proved, both in adverse and in prosperous times, alike faithful to its principles when it adhered to the monarchy during a successful rebellion, and when it opposed the monarch who would have brought back the Romish superstition, and, together with the religion, would have overthrown the liberties of England.—*Southey's Book of the Church.*

it to be observed with good faith, by our heirs for ever.

—(II.) We have also granted to all the Freemen of our kingdom, for us and our heirs for ever, all the underwritten Liberties, to be enjoyed and held by them and by their heirs, from us and from our heirs.—

(II. 1.) If any of our Earls or Barons, or others, who hold of us in chief by military service, shall die, and at his death his heir shall be of full age, and shall owe a relief, he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an Earl,* a whole earl's barony for one hundred pounds: the heir or heirs of a Baron for a whole barony, by one hundred pounds; the heir or heirs of a Knight, for a whole knight's fee, by one hundred shillings at most: and he who owes less shall give less, according to the ancient custom of fees.—(III. 2.) But if the heir of any such be under age, and in wardship, when he comes to age he shall have his inheritance without relief and without fine.—(IV. 3.) The warden of the land of such heir

* Titles of honour appear to have been originally names of office. For example: The Earl, in England, had in former ages important duties to perform in his county, as the Sheriff, (the Vice-Comes, or, Vice-Earl,) has now-a-days; but the name has remained now that the "peculiar duties" are become obsolete; and so it is with respect to other dignities. The Emperor, or King, the highest dignity known in Europe, still performs the high important duties which originally belonged to the office, as well as enjoys the rank, dignity, and honours. On the Continent there are Dukes and Earls who have still an important political character. Some of these "dignities," and the titles correspondent to them, are hereditary. So also were the eminent offices which they designate in the early ages, when there were duties to be performed. And hence hereditary titles. We first meet with the title of duke (the Dukes of Edom, &c.) Exodus, xv. 15. The distinction which the possession of titles of honour gives in society has ever made them objects of laudable ambition; the more especially because the same may descend to the possessor's posterity, &c.—ED.

who shall be under age, shall not take from the lands of the heir any but reasonable issues, and reasonable customs, and reasonable services, and that without destruction and waste of the men or goods, and if we commit the custody of any such lands to a sheriff, or any other person who is bound to us for the issues of them, and he shall make destruction or waste upon the wardlands, we will recover damages from him, and the lands shall be committed to two lawful and discreet men of that fee, who shall answer for the issues to us, or to him to whom we have assigned them. And if we shall give or sell to any one the custody of any such lands, and he shall make destruction or waste upon them, he shall lose the custody; and it shall be committed to two lawful and discreet men of that fee, who shall answer to us in like manner as it is said before.—(V.) But the warden, as long as he hath the custody of the lands, shall keep up and maintain the houses, parks, warrens, ponds, mills, and other things belonging to them, out of their issues, (35,) and shall restore to the heir when he comes of full age, his whole estate, provided with ploughs and other implements of husbandry, according as the time of Wainage shall require, and the issues of the lands can reasonably afford.—(VI. 3.) Heirs shall be married without disparagement, so that before the marriage be contracted, it shall be notified to the relations of the heir by consanguinity.—(VII. 4.) A widow, after the death of her husband, shall immediately, and without difficulty, have her marriage and her inheritance; nor shall she give any thing for her dower, or for her marriage, or for her inheritance, which her husband and she held at the day of his death: and she

may remain in her husband's house forty days after his death, within which time her dower shall be assigned.—(VIII. 17.) No widow shall be distrained to marry herself, while she is willing to live without a husband; but yet she shall give security that she will not marry herself without our consent, if she hold of us, or without the consent of the lord of whom she does hold, if she hold of another.—(IX. 5.) Neither we nor our bailiffs will seize any land or rent for any debt, while the chattels of the debtor are sufficient for the payment of the debt; nor shall the sureties of the debtor be distrained, while the principal debtor is able to pay the debt; and if the principal debtor fail in payment of the debt, not having wherewith to discharge it, the sureties shall answer for the debt; and if they be willing, they shall have the lands and rents of the debtor, until satisfaction be made to them for the debt which they had before paid for him, unless the principal debtor can show himself acquitted thereof against the said sureties.—(X. 34.) If any one hath borrowed any thing from the Jews, more or less, and die before that debt be paid, the debt shall pay no interest so long as the heir shall be under age, of whomsoever he may hold; and if that debt shall fall into our hands, we will not take any thing except the chattel contained in the bond.—(XI. 35.) And if any one shall die indebted to the Jews, his wife shall have her dower and shall pay nothing of that debt; and if children of the deceased shall remain who are under age, necessities shall be provided for them, according to the tenement which belonged to the deceased: and out of the residue the debt shall be paid, saving the rights of the lords (of

whom the lands are held.). In like manner, let it be with debts owing to others than Jews.—(XII. 32.) No scutage nor aid shall be imposed in our kingdom, unless by the common council of our kingdom; excepting to redeem our person, to make our eldest son a knight, and once to marry our eldest daughter; and not for these, unless a reasonable aid shall be demanded.—(XIII.) In like manner let it be concerning the aids of the city of London.—And the city of London should have all its ancient liberties, and its free customs, as well by land as by water.—Furthermore, we will and grant that all other cities, and burghs, and towns, and ports, should have all their liberties and free customs.—(XIV.) And also to have the common council of the kingdom to assess and aid, otherwise than in the three cases aforesaid: and for the assessing of scutages, we will cause to be summoned the Archbishops, Bishops, Abbots, Earls, and great Barons, individually, by our letters.—And, besides, we will cause to be summoned in general by our sheriffs and bailiffs, all those who hold of us in chief, at a certain day, that is to say at the distance of forty days, (*before their meeting,*) at the least, and to a certain place; and in all the letters of summons, we will express the cause of the summons: and the summons being thus made, the business shall proceed on the day appointed, according to the counsel of those who shall be present, although all who had been summoned have not come.*—(XV. 6.) We will not give leave to any one, for the future, to take an aid

* The first regular Parliament was under King John in 1204. In 1694 an act was passed for making Parliaments triennial, which was repealed in 1716.—ED.

of his own free-men, except for redeeming his own body, and for making his eldest son a knight, and for marrying once his eldest daughter; and not that unless it be a reasonable aid.—(XVI. 7.) None shall be distrained to do more service for a knight's-fee, nor for any other free tenement, than what is due from thence.—(XVII. 8.) Common Pleas shall not follow our court, but shall be held in any certain place.—(XVIII.) Trials upon the Writs of *Novel Disseisin*, of *Mort d'Ancestre* (death of the ancestor), and *Darrien Presentment* (last presentation), shall not be taken but in their proper counties, and in this manner:—We, or our Chief Justiciary, if we are out of the kingdom, will send two Justiciaries into each county four times in the year, who, with four knights of each county, chosen by the county, shall hold the aforesaid assizes, within the county, on the day and at the place appointed.—(XIX. 13.) And if the aforesaid assizes cannot be taken on the day of the county-court, let as many knights and freeholders, of those who were present at the county court, remain behind, as shall be sufficient to do justice, according to the great or less importance of the business.—(XX. 9.) A free-man shall not be amerced for a small offence, but only according to the degree of the offence; and, for a great delinquency, according to the magnitude of the delinquency, saving his contenement: a merchant shall be amerced in the same manner, saving his merchandize; and a villain shall be amerced after the same manner, saving to him his Wainage, if he shall fall into our mercy; and none of the aforesaid amerciements shall be assessed, but by the oath of honest men of the vicinage.—(XXI.) Earls

and Barons shall not be amerced but by their Peers, and that only according to the degree of their delinquency.—(XXII. 10.) No Clerk shall be amerced for his lay-tenement, but according to the manner of the others as aforesaid, and not according to the quantity of his ecclesiastical benefice.—(XXIII. 11.) Neither a town nor any person shall be distrained to build bridges or embankments, excepting those which anciently, and of right, are bound to do it.—(XXIV. 14.) No sheriff, constable, coroners, nor other of our bailiffs, shall hold pleas of our crown.—(XXV.) All counties, and hundreds, trethings, and wapontakes, shall be at the ancient rent, without any increase, excepting in our Demesne-manors.—(XXVI. 15.) If any one holding of us a lay-fee dies, and the sheriff or our bailiff shall show our letters-patent of summons concerning the debt which the defunct owed to us, it shall be lawful for the sheriff or our bailiff to attach and register the chattels of the defunct found on that lay-fee, to the amount of that debt, by the view of lawful men, so that nothing shall be removed from thence until our debt be paid to us; and the rest shall be left to the executors, to fulfil the will of the defunct; and if nothing be owing to us by him, all the chattels shall fall to the defunct, saving to his wife and children their reasonable shares.—(XXVII. 16.) If any free man shall die intestate, his chattels shall be distributed by the hands of his nearest relations and friends, by the view of the Church, saving to every one the debts which the defunct owed.—(XXVIII. 18.) No constable nor other bailiff of ours shall take the corn or other goods of any one, without instantly paying money for them, unless he can obtain

respite from the free will of the seller.—(XXIX. 19.) No constable (*Governor of a Castle*) shall distrain any knight to give money for castle-guard, if he be willing to perform it in his own person, or by another able man if he cannot perform it himself, for a reasonable cause: and if we have carried or sent him into the army, he shall be excused from castle-guard, according to the time that he shall be in the army by our command.—(XXX. 20.) No sheriff nor bailiff of ours, nor any other person, shall take the horses or carts of any free-man, for the purpose of carriage, without the consent of the said free-man.—(XXXI. 21.) Neither we, nor our bailiffs, will take another man's wood, for our castles or other uses, unless by the consent of him to whom the wood belongs.—(XXXII. 22.) We will not retain the lands of those who have been convicted of felony, excepting for one year and one day, and then they shall be given up to the lord of the fee.—(XXXIII. 23.) All kydells (*wears*) for the future shall be quite removed out of the Thames, and the Medway, and through all England, excepting upon the sea-coast.—(XXXIV. 24.) The writ which is called *Præcipe*, for the future shall not be granted to any one of any tenement, by which a free-man may lose his court.—(XXXV. 12.) There shall be one measure of wine throughout all our kingdom, and one measure of ale, and one measure of corn, namely, the quarter of London; and one breadth of dyed cloth, and of russets, and of halberjects, namely, two ells within the lists. Also, it shall be the same with weights as with measures.—(XXXVI. 26.) Nothing shall be given or taken for the future for the Writ of Inquisition of life or limb; but

it shall be given without charge, and not denied.—(XXXVII. 27.) If any hold of us by fee-farm, or socage, or burgage, and hold land of another by military service, we will not have the custody of the heir, nor of his lands, which are of the fee of another, on account of that fee-farm, or socage, or burgage; nor will we have the custody of the fee-farm, socage, or burgage, unless the fee-farm owe military service. We will not have the custody of the heir, nor of the lands of any one, which he holds of another by military service, on account of any petty-sergeantry which he holds of us by the service of giving us daggers, or arrows, or the like.—(XXXVIII. 28.) No bailiff, for the future, shall put any man to his law, upon his own simple affirmation, without credible witnesses produced for that purpose.—(XXXIX. 29.) No freeman shall be seized, or imprisoned, or dispossessed, or outlawed, or in any way destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land.—(XL. 30.) To none will we sell, to none will we deny, to none will we delay right or justice.—(XLI. 31.) All merchants shall have safety and security in coming into England, and going out of England, and in staying and in travelling through England, as well by land as by water, to buy and sell, without any unjust exactions, according to ancient and right customs, excepting in the time of war, and if they be of a country at war against us: and if such are found in our land at the beginning of a war, they shall be apprehended, without injury of their bodies and goods, until it be known to us, or to our Chief Justiciary, how the merchants of our country are

treated who are found in the country at war against us ; and, if ours be in safety there, the others shall be in safety in our land.—(XLII. 33.) It shall be lawful to any person, for the future, to go out of our kingdom, and to return, safely and securely, by land or by water, saving his allegiance to us, unless it be in time of war, for some short space, for the common good of the kingdom: excepting prisoners and outlaws, according to the laws of the land, and of the people of the nation at war against us, and merchants who shall be treated as it is said above.—(XLIII. 36.) If any hold of any escheat, as of the Honour of Wallingford, Nottingham, Boulogne, Lancaster, or of other escheats which are in our hand, and are Baronies, and shall die, his heir shall not give any other relief, nor do any other service to us, than he should have done to the Baron, if that Barony had been in the hands of the Baron ; and we will hold it in the same manner that the Baron held it.—(XLIV. 39.) Men who dwell without the Forest, shall not come, for the future, before our Justiciaries of the Forest on a common summons ; unless they be parties in a plea, or sureties for some person or persons who are attached for the Forest.—(XLV. 42.) We will not make Justiciaries, Constables, Sheriffs, or Bailiffs, excepting of such as know the laws of the land, and are well disposed to observe them.—(XLVI. 43.) All Barons who have founded abbies, which they hold by charters from the Kings of England, or by ancient tenure, shall have the custody of them when they become vacant, as they ought to have.—(XLVII. 47.) All Forests which have been made in our time, shall be immediately disforested ; and it shall be so done with

Water-banks, which have been taken or fenced in by us during our reign.—(XLVIII. 39.) All evil customs of forests and warrens, and of foresters and warreners, sheriffs and their officers, water-banks and their keepers, shall immediately be inquired into by twelve knights of the same county, upon oath, who shall be elected by good men of the same county; and, within forty days after the inquisition is made, they shall be altogether destroyed by them, never to be restored; provided that this be notified to us before it be done, or to our Justiciary, if we be not in England — (XLIX. 38.) We will immediately restore all hostages and charters, which have been delivered to us by the English,* in security of the peace and of their faithful service.—(L. 40.) We will remove from their bailiwicks the relations of Gerard de Athyes, so that, for the future, they shall have no bailiwick in England; Engelard de Cygony, Andrew, Peter, and Gyone de Chancell, Gyone de Cygony, Geoffrey de Martin, and his bro-

* British freedom is civil and religious liberty unrestrained by any undue stretch of ministerial authority. This is a sweet and holy attribute of a devout, and, for the most part, sensible people, whence the heart of the nation comes; and it must appear to what most awful obligations and duty those are held, from whom this heart takes its texture and shape:—our Queen, our princes of the blood royal,—all who wear the badge of office, or honour; all priests, judges, senators, pleaders, interpreters of the law; all instructors of youth, all seminaries of education, all parents, all learned men, all professors of science and art, all teachers of manners, upon them depend the fashions of a nation's heart; by them it is to be chastened, refined, and purified; by them is the state to lose the character and title of the beast of prey; by them are the iron scales to fall off, and a skin of youth, beauty, freshness and polish to come upon it; by them it is to be made so tame and gentle, as that a "stripling youth" may lead it with safety and honour.

thers, Philip Mark. and his brothers, and Geoffrey his nephew, and all their followers.—(LI. 41.) And immediately after the conclusion of the peace, we will remove out of the kingdom all foreign knights, cross-bow-men, and stipendiary soldiers, who have come with horses and arms to the molestation of the kingdom.—(LII. 25.) If any have been disseized or dispossessed by us, without a legal verdict of their peers, of their lands, castles, liberties, or rights, we will immediately restore these things to them; and, if any dispute shall arise on this head, then it shall be determined by the verdict of the twenty-five Barons, of whom mention is made below, for the security of the peace. Concerning all those things of which any one hath been disseized or dispossessed, without the legal verdict of his peers, by King Henry our father, or King Richard our brother, which we have in our hand, or others hold with our warrants, we shall have respite, until the common term of the Croisaders, excepting those concerning which a plea had been moved, or an inquisition taken, by our precept, before our taking the Cross; but as soon as we shall return from our expedition, or if, by chance, we should not go upon our expedition, we will immediately do complete justice therein.—(LIII.) The same respite will we have, and the same justice shall be done, concerning the disforestation of the forests, or the forests which remain to be disforested, which Henry our father, or Richard our brother, have afforested; and *the same* concerning the wardship of lands which are in another's fee, but the wardship of which we have hitherto had, occasioned by any of our fees held by military service; and for abbies founded in any other fee

than our own, in which the lord of the fee hath claimed a right; and when we shall have returned, or if we shall stay from our expedition, we shall immediately do complete justice in all these pleas.—(LIV.) No man shall be apprehended or imprisoned on the appeal of a woman, for the death of any other man than her husband.—(LV. 37.) All fines that have been made by us unjustly, or contrary to the laws of the land; and all amerciements that have been imposed unjustly, or contrary to the laws of the land, shall be wholly remitted, or ordered by the verdict of the twenty-five Barons, of whom mention is made below, for the security of the peace, or by the verdict of the greater part of them, together with the aforesaid Stephen, Archbishop of Canterbury, if he can be present, and others whom he may think fit to bring with him. And if he cannot be present, the business shall proceed, notwithstanding, without him; but so, that if any one or more of the aforesaid twenty-five Barons have a similar plea, let them be removed from that particular trial, and others elected and sworn by the residue of the same twenty-five, be substituted in their room, only for that trial.—(LVI. 44.) If we have disseized or dispossessed any Welshmen of their lands, or liberties, or other things, without a legal verdict of their peers, in England or in Wales, they shall be immediately restored to them; and if any dispute shall arise upon this head, then let it be determined in the Marches by the verdict of their peers: for a tenement of England, according to the law of England; for a tenement of Wales, according to the law of Wales; for a tenement of the Marches, according to the law of the Marches. The Welsh shall

do the same to us and to our subjects.—(LVII.) Also, concerning those things of which any Welshman hath been disseized or dispossessed without the legal verdict of his peers, by King Henry our father, or King Richard our brother, which we have in our hand, or others hold with our warrant, we shall have respite until the common term of the Croisaders, excepting for those concerning which a plea had been moved, or an inquisition made, by our precept, before our taking the cross. But as soon as we shall return from our expedition, or, if by chance we should not go upon our expedition, we shall immediately do complete justice therein, according to the laws of Wales, and the parts aforesaid.—(LVIII. 45.) We will immediately deliver up the son of Llewelin, and all the hostages of Wales, and release them from their engagements which were made with us, for the security of the peace.—(LIX. 46.) We shall do to Alexander King of Scotland, concerning the restoration of his sisters and hostages, and his liberties and rights, according to the form in which we act to our other Barons of England, unless it ought to be otherwise by the charters which we have from his father William, the late King of Scotland; and this shall be by the verdict of his peers in our court.—(LX. 48.) Also, all these customs and liberties aforesaid, which we have granted to be held in our kingdom, for so much of it as belongs to us, all our subjects, as well clergy as laity, shall observe towards their tenants as far as concerns them.—(LXI. 49.) But since we have granted all these things aforesaid, for GOD, and for the amendment of our kingdom, and for the better extinguishing the discord which has arisen be-

tween us and our Barons, we being desirous that these things should possess entire and unshaken stability for ever, give and grant to them the security underwritten, namely, that the Barons may elect twenty-five Barons of the kingdom, whom they please, who shall with their whole power, observe, keep, and cause to be observed, the peace and liberties which we have granted to them, and have confirmed by this our present charter, in this manner; that is to say, if we, or our Justiciary, or our bailiffs, or any of our officers, shall have injured any one in any thing, or shall have violated any article of the peace or security, and the injury shall have been shown to four of the aforesaid twenty-five Barons, the said four Barons shall come to us, or to our Justiciary if we be out of the kingdom, and making known to us the excess committed, petition that we cause that excess to be redressed without delay. And if we shall not have redressed the excess, or, if we have been out of the kingdom, our Justiciary shall not have redressed it within the term of forty days, computing from the time when it shall have been made known to us, or to our Justiciary if we have been out of the kingdom, the aforesaid four Barons shall lay that cause before the residue of the twenty-five Barons; and they, the twenty-five Barons, with the community of the whole land, shall distress and harrass us by all the ways in which they are able; that is to say, by the taking of our castles, lands, and possessions, and by *any* other means in their power, until the excess shall have been redressed, according to their verdict; saving *harmless* our person, and the *persons* of our Queen and children; and when it hath been redressed, they shall behave to us as they have done

before. And whoever of our land pleaseth, may swear that he will obey the commands of the aforesaid twenty-five Barons, in accomplishing all the things aforesaid, and that with them he will harrass us to the utmost of his power: and we publicly and freely give leave to every one to swear who is willing to swear; and we will never forbid any to swear. But all those of our land who, of themselves, and of their own accord, are unwilling to swear to the twenty-five Barons, to distress and harrass us *together* with them, we will compel them by our command to swear as aforesaid. And if any one of the twenty-five Barons shall die, or remove out of the land, or in any other way shall be prevented from executing the things above said, they who remain of the twenty-five Barons shall elect another in his place, according to their own pleasure, who shall be sworn in the same manner as the rest. In all those things which are appointed to be done by these twenty-five Barons, if it happen that all the twenty-five have been present, and have differed in their opinions about any thing, or if some of them who had been summoned would not, or could not be present, that which the greater part of those who were present shall have provided and decreed, shall be held as firm and as valid as if all the twenty-five had agreed in it: and the aforesaid twenty-five shall swear that they will faithfully observe, and, with all their power, cause to be observed, all the things mentioned above. And we will obtain nothing from any one, by ourselves, nor by another, by which any of these concessions and liberties may be revoked or diminished. And if any such thing shall have been obtained, let it be void and null: and we

will never use it, neither by ourselves nor by another.—(LXII.) And we have fully remitted and pardoned to all men, all the ill-will, rancour, and resentments, which have arisen between us and our subjects, both clergy and laity, from the commencement of the discord. Moreover, we have fully remitted to all the clergy and laity, and, as far as belongs to us, have fully pardoned all transgressions committed by occasion of the said discord, from Easter, in the sixteenth year of our reign, until the conclusion of the peace.—(49.) And, moreover, we have caused to be made to them testimonial letters-patent of the Lord Stephen, Archbishop of Canterbury; the Lord Henry, Archbishop of Dublin; and of the aforesaid Bishops, and of Master Pandulph, concerning this security, and the aforesaid concessions.—(LXIII.) Wherefore, our will is, and we firmly command that the Church of England be free, and that the men in our kingdom have and hold the aforesaid liberties, rights, and concessions, well and in peace, freely and quietly, fully and entirely, to them and their heirs, of us and our heirs, in all things and places, for ever, as is aforesaid. It is also sworn, both on our part, and on that of the Barons, that all the aforesaid shall be observed in good faith, and without any evil intention. Witnessed by the above, and many others.—Given by our hand in the Meadow which is called Runningmead, between Windsor and Staines, this 15th day of June, [A. D. 1215,] in the seventeenth year of our reign.

SEALED WITH THE SEAL OF KING JOHN.

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